

**ASSESSING THE LEGAL FRAMEWORK ON FINANCING  
TERRORISM IN KENYA: A Case Study of Al-Shabaab Terror  
Organization**

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for the Award of The Degree of Master of Laws (L.L.M.)**

## DECLARATION

I declare that this is my own work and that all sources quoted and/or used have been indicated and acknowledged through referencing.

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## SUPERVISOR'S DECLARATION

This project has been submitted for examination with my approval as the supervisor

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## **DEDICATION**

This thesis is dedicated to my dear husband Kenvine Odhiambo and lovely daughter Adena Shamirah Anyango Odhiambo from whom I draw great inspiration and desire to scale to greater heights. We desire to have a terror free country in the near future!

## ACKNOWLEDGEMENT

This write up was possible owing from the support and sacrifice of persons who despite their positions and commitments created time to contribute ideas to better this project. Foremost, I thank God for my life and ability to be able to continue scaling to greater heights.

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To our family friends to which we form, ‘*the Trio*’, Felix and the family together with Japheth and the family, I am forever indebted. Further, to my best friend Vera Omollo, your consistent reminders to always write and finish my thesis kept me going. To my late Uncle Smith Filsao Mc’Otieno who just passed on before my graduation, thank you for always believing in me.

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To the National Centre for Research and Technology Institute (NACOSTI), thank you for granting me a research permit to collect data within Nairobi County. I thank the interviewees who accepted to take part in this study and contributed immensely to the knowledge herein.

## **ABSTRACT**

Terrorism is a ‘dog’ that continues to bite hard at the society. As acts of terrorism increase, it is evident that the terror organizations have finances which they use in planning and carrying out the said attacks. A terror attack cannot be successful without sufficient finances. Kenya, as a country has strict legislations on terrorism financing. However, Kenya continues to be a bedrock of terror attacks, an evidence that terrorism financing is still on the high. It is for this reason that this study seeks to find out why terrorism cases are still on the rise yet there are available laws regulating terrorism financing.

This research sought to find out whether the existing laws on terrorism financing have been adequate in combating terrorism financing. It was undertaken based on the hypothesis that terrorism cases are on the rise due to poor implementation of the laws on terrorism financing. The available literature on regulation of terrorism financing and the analysis thereon does not touch on Kenya. It has majorly focused on global fight against terrorism financing. This research therefore addresses the issue on implementation of the laws on terrorism financing in Kenya.

This study adopted a qualitative method for data collection. Information was collected both from primary and secondary sources. A questionnaire was used to collect information from various respondents. From the primary data, analysis was drawn based on the problem statement guiding this research.

Through the analysis, it was realized that majority of the relevant stakeholders work individually and not together as a team. Hence, a major recommendation that working together would lead to reduced cases of terrorism financing. Further, the findings support the position that terrorism cases are on the rise due to poor implementation of terrorism financing laws.

Based on the field study conducted, it was evident that majority of the respondents are aware that there exist laws on terrorism financing. However, most of the respondents indicated dissatisfaction with the implementation process of the said laws. This finding confirmed the study's hypothesis that the existing laws on terrorism financing were ineffective due to poor implementation by the relevant bodies and institutions.

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## **LIST OF ABBREVIATIONS**

USA	United States of America
NACOSTI	National Centre for Science and Technology Institute
NPO	Non Profit organization
NGO	Non Governmental Organization
BFIU	Banking Fraud Investigations Unit
AML	Anti Money Laundering
FRC	Financial Reporting Centre

## **LIST OF INTERNATIONAL LAW, STATUTES AND REGULATIONS**

### **Municipal Laws**

The Constitution of Kenya, 2010

Mutual Legal Assistance Act No. 36 of 2011

Prevention of Terrorism Act No. 12 of 2012

Proceeds of crime and Anti-money Laundering Act, Act No. 9 of 2009

Public Benefit Organizations Act, Act No. 18 of 2013

Prevention of Organized Crimes Act No. 6 of 2010

### **Regulations**

Draft guidelines by Law Society of Kenya on the application of The Proceeds of crime and Anti-Money Laundering Act, 2009

Guidelines to the Insurance Industry on implementation of the proceeds of crime and Anti-Money Laundering Act and the Prevention of Terrorism Act, 2016

Revised scheme relating to Mutual Legal Assistance in Criminal Matters within the Common Wealth

The Capital Markets Act, Guidelines on the prevention of money laundering and terrorism financing in the capital markets

The proceeds of crime and Anti-money laundering regulations, 2013

### **International Instruments**

International Convention on combating Terrorism Financing, 1999

International standards on combating money laundering and the financing of terrorism and proliferation, 2012

Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on suppression of Terrorism) Regulations, 2013

United Nations Convention against transnational organized crime and the protocols thereto, 2009

### **Foreign Legislation**

US Anti-Terrorism and Effective Death Penalty Act of 1996

## LIST OF CASES

1. *Abdirizak Muktar Edow v Republic* Criminal Appeal No. 149 of 2016 (13<sup>th</sup> March, 2019)
2. *Francis Macharia Karichu v Republic* Criminal Revision 698 of 2018 (10<sup>th</sup> July, 2018)
3. *Mohammed Haro Kare v Republic* Criminal Appeal No. 49 of 2016 (29<sup>th</sup> November, 2016)
4. *Osman Mohamed Balagha v Republic* Criminal Appeal No. 30 of 2017 (4<sup>th</sup> May, 2018)
5. *Thomas Mwanzia Komo v Republic* Criminal Appeal No. 98 of 2014 (19<sup>th</sup> May 2015)

## CHAPTER ONE

### INTRODUCTION: A GENERAL OVERVIEW AND OUTLINE

#### 1.0 Background to the Problem

*“The “war on terror” will be won in the halls of financial institutions through the destruction of cheque books and not on the battlefields.”<sup>1</sup>*

Money is at the core of all terrorist activities. Lack of it means that no terrorist attack can take place. It is required for either training of already existing members of a terrorist group or new recruits, recruitment of new members into the gangs, facilitation of its members and general support for its subsistence.<sup>2</sup> This connotes the fact that terrorism has to be financed for it to exist. The financing of terrorism is therefore, the financial support, in any form, of terrorism or those who encourage, plan or engage in terrorism.<sup>3</sup>

Carrying out a terrorist attack involves putting in resources to plan and to ensure the plan is successful. When a terrorist gang plans to attack a particular location miles away from its base, resources, especially financial, will be required to carry out that attack effectively.<sup>4</sup> This, therefore, means that the terrorist group must have sources of finances either, personal or external. Terror attacks are therefore likely to cause great and adverse effects upon a state’s economy and in the long run the state’s investment sphere.<sup>5</sup>

The main objective of financing terrorism is to provide funds for terrorist activities using either good or bad money but for bad purposes.<sup>6</sup> The process of terrorist financing involves a three-tier process; firstly, raising funds whether from legitimate or non-legitimate sources, secondly, the funds collected are transferred to various terrorist groups in their locations.

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<sup>1</sup> Ayers, A., ‘The Financial Action Task Force: The War on Terrorism will not be fought on the Battlefield’ (2002) (18) *School Journal of Human Rights* pp. 449-59.

<sup>2</sup> Charity Commission for England and Wales, *Charities and Terrorism: Terrorist financing* Chap. 1 Module 7.

<sup>3</sup> The DTC Association, *Fighting Crime and Terrorism*; Definition by World Bank and International Monetary Fund.

<sup>4</sup> Jose Tavares, “The Economics of Terrorism: A synopsis” (2007) 2(1) *The Economics of Peace and Security Journal*.

<sup>5</sup> Ibid.

<sup>6</sup> Jersey Financial Services Commission, ‘The fundamentals of terrorist financing’ (2016).

Thirdly, the funds are allocated to various activities including recruitment of new members, funding of terror attacks and subsistence costs.<sup>7</sup>

Terrorists either fund themselves or are funded through various means. They require money to pay salaries, cater for subsistence and communications, training costs, travel and logistical expenses.<sup>8</sup> The first notable source is from criminal activities.<sup>9</sup> The members of a terrorist gang engage in such heinous acts of crime mostly bank robberies, money laundering and use this money to carry out the attacks on human population.<sup>10</sup> Illegal activities supply the majority of funds used by terror organizations.<sup>11</sup> Other criminal activities, which in turn enable terrorists to have funds, include drug trafficking, cheque fraud, extortion among other criminal acts.<sup>12</sup>

Kenya continues to be bedrock of many terrorist attacks majorly centered in its towns and cities. Quite a number of terrorism attacks have occurred since 2001 and the government of Kenya has sought to come up with either laws or regulations after every attack to curb the terror threats.<sup>13</sup> From the year 1970 to 2014, Kenya has experienced four hundred and forty terrorist attacks with at least one thousand, four hundred deaths and five thousand eight hundred injured persons.<sup>14</sup> The most recent attack occurred on 15 January 2019, at Dusit 2 Hotel in Westlands, Kenya with the death toll being twenty-one persons and a few other injuries.<sup>15</sup>

Terrorists in Kenya engage in illegal poaching of Kenyan wildlife to raise funds for carrying out terror attacks. As reported by the Elephant Action League, Al-Shabaab terror

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<sup>7</sup> Ibid.

<sup>8</sup> Action Task Force, 'Terrorist financing' (2008).

<sup>9</sup> Erik Mannik, 'Terrorism: Its past, present and future prospects' (2009) pp. 151-170.

<sup>10</sup> Mark S. Hamm, 'Crimes committed by Terrorist Groups: Theory, Research and Prevention' (2005).

<sup>11</sup> Loretta Napoleoni, "Terrorism Financing in Europe" (2005) *Journal of Middle Eastern Geopolitics* pp. 47-58.

<sup>12</sup> Ibid 20.

<sup>13</sup> Samuel Mukira Mohochi, 'Preventive Counterterrorism Action: Case study of Kenya' (2011).

<sup>14</sup> Michael Nyongesa, 'Are land disputes responsible for terrorism in Kenya? Evidence from Mepeketoni Attacks' (2017) 1(2) *Journal of African Democracy and Development*.

<sup>15</sup> Rueben Kyama, Emily Oduor et al, 'Death toll rises in Kenya Attack as distraught relatives scramble' *New York Times* (Nairobi, 16 Jan 2019) .

organization derives 40% of its finances from wildlife poaching done in Kenya.<sup>16</sup> Other activities that give money to this terror organization include charcoal burning, and taxation.<sup>17</sup>

According to a report<sup>18</sup> released by the Financial Intelligence Authority, terrorists attacking countries within East Africa use businesses as means of funding their planned terror attacks. Further, as at 2014, Al shabaab terror group raised a total of four hundred million dollars from trading within Kenya and United Arab Emirates.<sup>19</sup> Its highest source of income was piracy that gave them four hundred million dollars in 2013 and taxation, which gives them nearly twenty five million dollars every year.<sup>20</sup>

### **1.0.1 History and formation of the Al-Shabaab group**

Al-shabaab group is a subsidiary of Al Qaeda and is based in the Eastern part of Africa with its headquarters in Somalia.<sup>21</sup> Since 2006, it has and continues to wage war across Somalia and its neighboring countries including Kenya with an intention of overthrowing the governments and introducing an extremist sharia led regime.<sup>22</sup> Ideologically, Al-shabaab began when Salafi and Wahhabi from Egypt and Saudi Arabia decided to attempt to interfere with the dominating influence of Sufi Koranic followers. From Afghanistan, they returned to Somalia to continue with their intention of overthrowing the government. During these times, these followers, Abdullah Azzam, Aden Hashi Aryo, who are some of the founders of Al shabaab group, kept on spreading their mission to the youths and hence recruited as the days passed by.<sup>23</sup>

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<sup>16</sup> Elema Wario Saru, 'Poaching and the funding of international terrorism: A case study of Kenya' (MA Thesis, University of Nairobi 2016).

<sup>17</sup> Ibid.

<sup>18</sup> Angeline Mbogo, 'Terrorists use businesses across East Africa to fund attacks, says report' *The Kenyan Wall Street* (28 February 2018).

<sup>19</sup> United Nations Office on Drugs and Crime, 'Digest of Terrorist Cases' (2010).

<sup>20</sup> Ibid.

<sup>21</sup> < <https://intelligencebriefs.com/al-shabaabs-financial-systems-and-source-of-funding/>> accessed 15 May 2019.

<sup>22</sup> Seth G. Jones, Andrew M. Liepman et al, 'Counterterrorism and counter insurgency in Somalia: Assessing the campaign against Al shabaab' (2016) Rand Corporation.

<sup>23</sup> Ibid, 27.



Between 2001 and 2002, the Al-shabaab recruits and its leaders joined Al Qaeda, which had already become a global threat, to fight in Afghanistan after which they returned to Somalia, feeling experienced to engage in cumbersome terrorism attacks. Fast forward to January 2012, Al-shabaab indicated its intention of expanding its terror attacks to the Republic of Kenya on the basis that the Kenyan Government had sent its military wing to Somalia to aid the Somali Government in its fight against terrorism.<sup>24</sup>

Statistically, Al-shabaab has grown exponentially from 33 in 2005, to around 5,000 persons in 2009 and, continues to triple up every year.<sup>25</sup> It has grown from a small sect of bodyguards to a battalion of hundreds of fighters. These first warriors were taken from poor youths based in Somalia with no proper means of survival.<sup>26</sup>

Its membership is estimated to be between 5,000 to 9,000 armed fighters with a huge network of sympathizers, spies, informants and collaborators. The members of this terrorist organization carry out themselves as the locals of the region they stay hence it is not easily possible to identify them unless during the attacks.<sup>27</sup> An example is the Dusit 2 attack in Kenya where the ‘mastermind’ allegedly stayed in the estate with the neighbors seeing him but could not tell that he was a terrorist.

Al-shabaab has a special battalion which acts as its reinforcing unit. This battalion comprises of various cells with five members each, which cells are skilled diversely to carry out various duties for the welfare of the organization.<sup>28</sup> It has terrorism apparatus which is enough to

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<sup>24</sup> Ibid.

<sup>25</sup> Tom Keatinge, ‘The role of finance in defeating Al-shabaab’ (2014) The royal United Services Institute for defence and security studies.

<sup>26</sup> Captain Patrick McKinney, ‘Troubled youth: The Al Shabaab threat’ (2010) 36(3) *Military Intelligence Professional Bulletin*.

<sup>27</sup> Ministry of Immigration and integration, Danish Refugee Council, ‘South and Central Somalia: The security situation, al shabaab presence, and target groups’ (2016).

<sup>28</sup> < [https://www.un.org/sc/ctc/wp-content/uploads/2019/02/N1846950\\_EN.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2019/02/N1846950_EN.pdf) > accessed 14 June 2019.

support all its training camps, carry out the terrorist attacks and sufficient cash to finance the production of recruitment materials and spread propaganda on the internet.<sup>29</sup>

### **1.0.2 Al-shabaab's Affiliate Groups**

Al-shabaab terror organization has affiliates across the world including Kenya. In Kenya, the Muslim Youth Centre (commonly referred to as 'MYC') is an affiliate to this group. It is also called 'Al-hijra' and comprises of both Muslim and non-Muslim followers.<sup>30</sup> It merged with the larger Al-shabaab group in 2012. It is reported by the UN Monitoring group that Al-hijra sends money and more recruits to Somalia to support Al-shabaab terror organization in its dealings and attacks.<sup>31</sup>

### **1.0.3 History of financing of Al-shabaab**

Financing is key to the survival of Al-shabaab and ability to carry out the heinous terror attacks on the human population.<sup>32</sup> In 2007, most of Al-shabaab's leaders and members had been killed and the organization was almost collapsing. However, few of the remaining members sought to revamp it and looked for ways of financing itself. The group went viral on the internet spreading online propaganda and trying to recruit new members into its organization. This online recruitment attracted the Somali population in the Diaspora who remitted a total of 1 Billion US Dollars to this terrorist organization and continues to remit the same annually.<sup>33</sup>

As at 2011, the United Nations Report indicated that Al-shabaab was having a turnover of about 70-100 million dollars per year hence allowing it to continue carrying out its missions across the countries and even expand its territories and followers.<sup>34</sup> Al-shabaab has two

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<sup>29</sup> Captain Patrick McKinney, 'Troubled youth: The Al Shabaab threat' (2010) 36(3) *Military Intelligence Professional Bulletin*.

<sup>30</sup> Fredrick Nzes, 'Al-Hijra: Al Shabaab's affiliate in Kenya' (May 2014) 7(5) *CTC Sentinel* pp. 24.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Ibid*.

<sup>33</sup> *Supra*, fn 5.

<sup>34</sup> Tom Keatinge, 'The role of finance in defeating Al-shabaab' (2014) *The royal United Services Institute for defence and security studies*.

offices within its finance department; the Zakawaat office which collects non-monetary tax from the public and the Finance office which collects monetary contributions from people. Non-monetary items may include livestock or farm produce. This finance department was initiated in 2008 and has various troops spread across the countries to collect the non-monetary items.<sup>35</sup>

This terror organization has strict accountability mechanisms especially as regards their finance officers. These officers are required to account and declare all their wealth periodically. Wealth which cannot be accounted for, is considered as the group's wealth hence repossessed by the organization.<sup>36</sup>

This study focused on financing of terrorism, the Kenyan laws regulating terrorism financing, the implementation or otherwise of the said regulatory laws and a case study of the financing life of Al shabaab terror organization.

### **1.1 Statement of the Problem**

There exist laws and regulations in Kenya on terrorism financing and terrorism generally. Terrorism financing is a three-tier process. The first step involves sourcing for funds. Laws like the Prevention of Terrorism Act and Anti-Money Laundering Act explicitly provide for offences relating to terrorism financing and what amounts to terrorism financing. The Prevention of Organized Crimes Act, The forests Act and the Public Benefits Organizations Act also prohibit certain sources that could be used by terrorists to acquire finances for their terrorist activities.

The second step in the financing process involves the movement of funds from one place to another. The Capital Markets Authority, Central Bank of Kenya, Insurance Regulatory Authority, Mutual Legal Assistance Act have laid down regulations and steps including freezing process, which can be used by financial institutions to prevent the movement of

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<sup>35</sup> Ibid.

<sup>36</sup> Hiraal Institute, 'The AS Finance System' (July 2018) pp. 1.

terror-related funds or money sponsored by persons to terrorists to get to the terrorists. The last step involves allocation of funds to various terrorist activities. If the institutions manage to stop the movement of funds in stage two of the financing process, then stage three never ensues. Nevertheless, if the terrorists manage to get the funds and allocate it to their various activities, laws such as Prevention of Terrorism Act come in to prohibit use of funds to finance recruitment, commission a terror attack and hold persons hostage.

With laws existing at every stage of the terrorism financing process, terrorism attacks continue to increase steadily over the years meaning that terrorism financing still takes place behind the scenes. In response to this problem, this study investigated the challenges faced in implementation of the laws on financing of terrorism and provided solutions on how the Kenyan State may improve on implementation to curb the problem of terrorism financing. Further, this study analyzed whether the existing laws are adequate to control the financing of terrorism.

## **1.2 Research Questions**

The research questions were:

1. Whether the laws and policies on terrorism financing in Kenya are adequate in curbing terrorism financing;
2. Whether there has been proper implementation of the laws on terrorism financing in Kenya; and
3. What are the challenges in implementing the laws on terrorism financing in Kenya?

## **1.3 Objective of the study**

The Aim of this study was to establish the adequacy or otherwise of the existing policy and legal framework on financing of terrorism in Kenya and its implementation. This study focused on the following specific objectives-

- a) Analysis of the existing laws, conventions and regulations on terrorism financing in Kenya;
- b) To find out whether the said laws are adequate in combating terrorism financing in Kenya;
- c) To undertake a case study on Al-Shabaab terrorist group particularly on its financing and thereafter analyze the information in relation to the legal framework on terrorism financing in Kenya.

#### **1.4 Research Hypothesis**

It was hypothesized that the current law on terrorism financing has been poorly implemented hence an increase in terrorism cases.

#### **1.5 Justification for the study**

The findings of this study will enable the Government of Kenya including all relevant agencies and institutions dealing with counter terrorism to know how to deal with terrorism financing. This study has reviewed the legislations and all applicable laws on terrorism financing, considered the statistics and modes of financing for Al shabaab terror organization and derived a conclusion on whether the problem lies in implementation of the laws or their effectiveness or otherwise. This will help the Kenyan State to understand why the cases of terror attacks are still on the rise in Kenya.

Moreover, this study will aid the Kenyan State in making changes to its policies and laws on terrorism financing and make decisions on whether to hold trainings, seminars in a bid to encourage capacity development in the fight against terrorism financing. The recommendations drawn from the conducted field study together with the analyzed data from the desktop research if implemented will be a better move towards reducing increasing cases of terrorism financing in Kenya.

Further, a look at the graphs in Chapter Four, clearly portray a picture of how poorly the awareness on terrorism financing, its legislation and the implications of the same, have been carried out by the Kenyan State. This study therefore will assist the Government of Kenya to understand, based on the statistics, the need to create more awareness on terrorism financing.

## **1.6 Theoretical Framework**

This study is premised on the sociological theory. Sociologists perceive law as an important ingredient in the attainment of social order in a society and its development. In case of a lacuna in law, they believe science as an art becomes the stepping-stone for solutions.<sup>37</sup>

Ehrlich argues that law must be studied and understood within a societal context. Sociology of law, according to him brings about the relationship between living law and positive law. In his view, a state in the creation of law is non-coercive and its actions are predicated upon the needs and will of the people. Therefore, the efficacy of the law depends upon its correspondence with the realizing the desires of its citizens.<sup>38</sup>

Pound, another proponent of this school, argued that law is a specialized agent of social control and that it is a necessary tool for constraining citizens to do their part and hence deter them from anti-social conduct. The society is viewed as having an independence of its own as regards to its needs, separate from the ones of its citizens. The law therefore comes in to ensure continuity of a society.<sup>39</sup>

The main theme underlined in this school of thought is that of legal-effectiveness. These scholars argue that legal-effectiveness poses a problem formulation in that the reality of law is different from the ideology of law. Law in action is different from the law in theory hence, law is regarded as ineffective therefore requiring a need for reforms. These scholars argue

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<sup>37</sup> Arlene Sheskin, 'A critical review and assessment of the sociology of law' *Mid-American review of sociology* (1978) 3(2) 109-123.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

that law is not what lawyers regard as binding or obligatory precepts, but rather, the observable dispositions of judges, policemen, prosecutors or administrative officials. The law is like any other thing since it is amenable to the scientific method as any other aspect of reality.<sup>40</sup>

Sociological jurists believe that law is not an enforceable norm set down by a sovereign neither is it an absolute value as argued by natural law scholars. Instead, they believe that law has its foundation upon social customs which governments have an obligation to enforce.<sup>41</sup> Further, that law is subject to modification based on various social factors and as such is not a closed system of standards.<sup>42</sup>

Jhering<sup>43</sup> argues that law is the sum of conditions of social life in the widest sense of the terms as secured by the power of the state through the means of external compulsion. He believes that coercion has to exist to give a purpose to the existing law. This law, he believes consists of rules laid down by the society and since the state is the sole possessor of coercion in a society, then it becomes the only source of law. Therefore, law becomes enforceable because there exists force from the state.<sup>44</sup>

The sociological school of thought lays a foundation upon which this study is written. This study seeks to find out the effectiveness or otherwise of the implementation of the laws on financing of terrorism in Kenya and whether they conform to the nature of terrorism situation in the country.

## **1.7 Literature review**

Cases of terrorism are more prone in poor countries with low political development as compared to rich countries, which put in low costs of finances in terrorism since such cases

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<sup>40</sup> Donald J. Black, 'The boundaries of legal sociology' (1972) 81(6) *Yale Law Journal* 1086-1101.

<sup>41</sup> Ibid.

<sup>42</sup> Elise Nalbandian, 'Introductory concepts on sociological jurisprudence: Jhering, Durkheim, Ehrlich'(2010) 4(2) *Mizan Law Review* 348-354.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

are rare.<sup>45</sup> However, when it comes to financing of terrorism, the funders are mostly well educated and rich.<sup>46</sup> Terrorist financing is the financial support, in any form, of terrorism or of those who encourage, plan, or engage in terrorism either by facilitating expenses for travel, explosive materials, weapons and vehicles' funding required for maintaining a terrorist network, organization or cell.<sup>47</sup>

The main objective of financing terrorism is to provide funds for terrorist activities using either good or bad money but for bad purposes.<sup>48</sup> The process of terrorist financing involves a three-tier process; firstly, raising funds whether from legitimate or non-legitimate sources, secondly, the funds collected are transferred to various terrorist groups in their locations. Thirdly, the funds are allocated to various activities including recruitment of new members, funding of terror attacks and subsistence costs.<sup>49</sup>

Carrying out a terror attack requires a financial plan hence to combat terrorism, there is need for a state to pass laws and regulations. Kenya has implemented various laws and come up with regulations to curb terrorism financing. However, terror attacks are still on the rise hence a need to find out whether there is lack of implementation of the said laws or the available laws are in efficient to deal with terrorism financing in Kenya.

Most scholars have broadly discussed what is meant by terrorism financing, modes of financing terrorism and platforms used by terror groups to finance their activities. A few scholars have discussed implementation of laws on terror financing in specific countries. However, none of the scholars has written on the implementation or otherwise of terror financing laws in Kenya.

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<sup>45</sup> Norman Loayza, 'Terrorism, Economic Development and Political Openness' (2008) *Cambridge University Press*.

<sup>46</sup> Jose Tavares, "The Economics of Terrorism: A synopsis" (2007) 2(1) *The Economics of Peace and Security Journal*.

<sup>47</sup> Eme Okechukwu Innocent, Ugwu Christian Chibuike, 'Terrorist financing in Nigeria: A case of Boko Haram' (2016) 2(3) Science Arena Publications, *Specialty Journal of Psychology and Management* 41-52

<sup>48</sup> Jersey Financial Services Commission, 'The fundamentals of terrorist financing' (2016).

<sup>49</sup> Ibid.



### 1.7.1 Implementation of laws and regulations on terrorism financing

The sources and challenges created by terrorism financing can be both internal and external.<sup>50</sup>

Various factors such as corruption, shortage of labor, prosecution and conviction are among many factors that contribute to financing of terrorism. In analyzing various guidelines and case studies of terrorism financing, there exist United Nations Guidelines and the regulations put forth by the Financial Action Task Force.<sup>51</sup>

There are also initiatives put forth by states, including the United States and the European Union through created models to deal with financing of terrorism. The plan to carry out a terrorist attack whether one that will affect a larger population, or, a smaller one, generally, does not require a huge amount of funds according to Dalyan<sup>52</sup>. However, limiting the resources available to terrorist organizations by effective financial control may prevent some attacks from taking place, stop the transfer of small amounts of money that may save lives or at least reduce the possible impact of attacks, which cannot be prevented.<sup>53</sup>

Failure of a state or a relevant organization to detect the sources of funding used for recruitment of the terrorists creates the first step towards inability to fight the terrorist organization and curtail the financing aspect of it.<sup>54</sup> There is therefore need to come up with initiatives through laws and regulations to curb terror financing and reduce cases of terrorism.

Verdugo<sup>55</sup> considers the implementation of International Standards against Anti-Money Laundering and Financing of Terrorism at a domestic level. He explains the features of terrorist financing to include, use of alternative legal and illegal ways to raise funds and the relationship between terrorism, Narcotic Trafficking and other international crimes. He gives

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<sup>50</sup> Vivek Chadha, 'Lifeblood of terrorism: Countering terrorism finance' (2015) *Institute for defence studies and analysis*.

<sup>51</sup> Ibid.

<sup>52</sup> Sener Dalyan, 'Combating the financing of terrorism: Rethinking strategies for success' (2008) 1(1) *Defence against terrorism review* pp. 137-153.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Conception Verdugo-Yepes, 'Enhancing International Cooperation in the fight against the Financing of Terrorism' (2008) 1(3) *Journal of Global Change and Governance*.

a general overview of the implementation of terror financing laws but does not focus on a particular state or organization.<sup>56</sup>

Mathew<sup>57</sup> believes that terrorism is an act that will never end. He argues that groups will always be disappointed at state governments and will always seek to fight the political set up of states. States therefore need to implore tactics to fight financing of terrorism, meaning, if states can be able to locate the sources of finances and terminate them, then terrorism cases will reduce. He considers the financing of terrorism in Middle East, the potential financiers of the same and notes that the groups do not open up bank accounts in their names thus tracking them becomes a hurdle.<sup>58</sup>

### **1.7.2 Regulation and implementation of terrorism financing in the world**

Gordon<sup>59</sup> discusses the global standards set to curb terrorism financing. He argues that most of the laws and regulations exist in theory since the terror organizations have ways of financing their activities without them being caught up on the wrong side of the law. He explains that through reviewing, rewriting, and reevaluation of terror circumstances occurring around the world, the Financial Action Task Force drew global standards on how to curb terrorism financing.<sup>60</sup>

However, he states that financial institutions have in compliance with the standards, reported cases of suspicious transactions, which are investigated, and the suspects prosecuted, but no reported cases of conviction. He further argues, that in as much as most states across the world have endorsed the Financial Action Task Force (FATF) recommendations on terrorism

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<sup>56</sup> Ibid.

<sup>57</sup> Mathew A. Levitt, 'The political economy of Middle East Terrorism' (2002).

<sup>58</sup> Ibid.

<sup>59</sup> Richard K. Gordon, 'Losing the war against dirty money: Rethinking global standards on preventing money laundering and terrorism financing' (2011) Vol. 21 *Duke Journal of comparative & International Law* pp. 503-565.

<sup>60</sup> Ibid.

financing, they have not been effective. Thus, he recommends that the recommendations should be revised.<sup>61</sup>

McCulloch<sup>62</sup> considers the legal regime on financing of terrorism but focuses his study on United States of America (USA), United Kingdom, Australia, the laws they have in place to suppress terrorism including the regulations passed. He goes ahead to analyze the outcome of the implementation of the said laws and in his analysis, concludes that a reduction of the cases has been observed in USA due to existing legal framework.<sup>63</sup>

Miriam and Damian<sup>64</sup>, analyze the European Union Policies and their effectiveness in combating financing of terrorism. They provide a distinction between money laundering and terrorist financing and affirm that combating of terrorist financing deals with the purpose of the funds given out whereas money laundering is concerned with cleaning of that particular money. They further consider the measures put in place to combat terrorist financing including the legal and institutional frameworks and finally how the European Union has contributed to the war against terror.<sup>65</sup>

In considering the need to combat terrorism financing, Weisser<sup>66</sup> explains on the tools used for the process and affirms that the backbone of fighting terrorism financing lies in the identification, detection, freezing, seizure and forfeiture of the said funds. Therefore, whether or not a system in place has been able to combat terrorism financing will depend on the reduction of the crime and threats posed by the terrorist organizations. This means that if a

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<sup>61</sup> Ibid.

<sup>62</sup> Jude McCulloch and Sharon Pickering, 'Suppressing the financing of terrorism' (2005) *Oxford University Press* pp. 470-486.

<sup>63</sup> Ibid.

<sup>64</sup> Miriam Allam & Damian Gadzinowski, 'Combating the financing of terrorism: EU Policies, polity and politics' (2009) pp. 37-43.

<sup>65</sup> Ibid.

<sup>66</sup> Niclas-Frederic Weisser, 'The effectiveness of the global combat against the financing of terrorism for preventing terrorist activity' (2013) pp. 314-349.

state's legislation does not take into consideration the processes involved in forfeiting the funds used in terrorism, then terror attacks will increase.<sup>67</sup>

In line with the fight against financing of terrorism, Crimm<sup>68</sup> observes that the United States of America's government focuses on economic sanctioning as a remedy in reducing the cases of financing. Economic sanctioning involves freezing of assets and the US Government believes that through freezing, most of the funds targeted by the terrorist organizations are recovered.<sup>69</sup>

Hubschle<sup>70</sup> in considering how a domestic legislation should frame the offence of financing terrorism, argues that there are key items including general legal frameworks and obligations of financial institutions which must be included for it to effectively guide the relevant institutions. Hubschle uses South Africa and Mauritius as case studies and analyzes their domestic laws against terrorism financing. Hubschle further analyses the role of banks in the war against terror financing and modes put in place to detect terror financing in the said countries.<sup>71</sup>

Njotni<sup>72</sup> looks at the anti-terrorism measures put in place by South Africa on transaction reporting and argues that for an anti-terrorism framework to succeed, the human rights culture must support it. Nevertheless, UN instruments do not sufficiently cover transaction reporting in terrorism cases, hence the ineffectiveness of the same. In analyzing the South African laws on terrorism financing, he argues that South Africa's approach in fighting terrorism financing ensures that human rights protection is at the core. As terrorism financing is fought, human rights must be protected.

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<sup>67</sup> Ibid.

<sup>68</sup> Crimm Nina J., "High Alert: The Government's war on the financing of terrorism and its implication for donors, domestic charitable organizations, global philanthropy" (2004) 45(134) *William and Mary Law Review* 1342-1450.

<sup>69</sup> Ibid.

<sup>70</sup> Annette Hubschle, 'Terrorist financing in Southern Africa: Are we making a mountain out of a molehill?' (2007) *Institute for security studies Paper* 132.

<sup>71</sup> Ibid.

<sup>72</sup> Mzukisi Niven Njotni, 'Anti-terrorism measures in South Africa: Suspicious transaction reporting and human rights' (2015) *African Human Rights Law Journal* 515-536.

However, he opines that that approach exists in theory since in reality, human rights are considered only upon the terrorism cases being concluded. He therefore proposes that the South African Government should amend its legislations to do away with ambiguous provisions on transaction reporting involving terrorism cases.<sup>73</sup>

Doron<sup>74</sup> on the other hand focuses on the Australian Government and how it has implemented the Financial Action Task Force recommendations on terrorism financing. He explains that in as much as these recommendations are soft law, hence non-binding, members of the United Nations including Australia have an obligation to come up with laws, which align with the recommendations or adopt the recommendations and comply with them. Australian Government has come up with laws and put up measures such as requirement of all money or value transfer service operators to hold Australian licence, all international funds transfer to be reported to the relevant authority and incoming or outgoing currencies must be reported.<sup>75</sup>

Clunan<sup>76</sup> argues that the fight against terrorism financing can only be won by combined efforts of all countries across the globe. She opines that a well laid out legal framework regulating both formal and informal modes of terror financing needs to exist within a state to effectively combat terrorism financing. She uses United States of America as a case study to explain whether as a state it has been successful in the fight against terrorism financing or not.<sup>77</sup>

Angela and Jill<sup>78</sup> explain that states have been unable to curb terrorism financing since terrorists have identified virtual environments for financing their activities, which environments are not covered under the controlled sections of the law. They argue that the internet has created a platform whereby terrorists are conducting illegal transactions and

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<sup>73</sup> Ibid.

<sup>74</sup> Doron Goldbarsht, 'Who's the legislator anyway? How the FATF's global norms reshape Australian Counter terrorist financing laws' (2017) Vol. 45 *Federal Law Review* 127-150.

<sup>75</sup> Ibid.

<sup>76</sup> Anne L. Clunan, 'The fight against terrorist financing' (2006) 121(4) *Political Science Quarterly* 568-596.

<sup>77</sup> Ibid.

<sup>78</sup> Angela Irwin and Jill Slay, 'Detecting money laundering and terrorism financing activity in second life and world of warcraft' (2010) *International Cyber Resilience Conference* 41-51.

going scot-free since no regulations exist to curb the same. This results from the strategies in place detecting these transactions after the incidents rather than during the transaction process. Therefore, they advise that states come up with models and legal techniques to detect the suspicious transactions on the virtual world.

### **1.7.3 Regulation and implementation of terror financing laws in Kenya**

There was no accessible literature on the regulation and implementation of terrorism financing laws in Kenya.

In conclusion, the studies by McCulloh and Miriam aided this research in analyzing where the Kenyan State has failed in its implementation of its laws and regulations on financing of terrorism. Further, they assisted in considering whether the Kenyan State needs to adopt the approaches taken by the said states. If it has already done so, this research sought to provide solutions and way forward on how the state can further implement the said guidelines. Hubschle's study aided this discussion in considering whether the Kenyan laws have taken into consideration the most important factors in fighting terrorism financing.

This study was state specific and focused only on Kenya as a state. It analyzed the available laws in Kenya on financing; considered their impact on dealing with the cases of financing of acts of terrorism and provided solutions on the way forward. This study sought to find out whether the Kenyan State through its legislations on financing of terrorism, has been able to detect all possible sources of funding for terrorists not only at the recruitment stage but also throughout the whole process from the start to the actualization of the process by carrying out an attack.

### **1.8 Research methodology**

This study required information that demonstrates the effectiveness of the laws in Kenya on financing of terrorism. It employed qualitative approach in collecting data. Data was collected from primary and secondary sources. The secondary information was obtained from

the library and the internet. In summation, therefore, it used a mix of interviews, reviews of online documents and library resources to collect the information required.

Upon collection of the relevant information, a holistic approach was applied in analyzing the information. In collecting primary data, interviews were conducted using questionnaires. There was one questionnaire with a range of questions seeking to find out the financing of Al shabaab terror organization and the implementation and challenges there from on regulation. The proposed time taken with each interviewee was 30 minutes.

The initial intended targeted interviewees included representatives from Capital Markets Authority, Central Bank of Kenya, Insurance Regulatory Authority, and Financial Reporting Centre and the Communications Authority of Kenya among others to be identified during the interviewing process.

The justification for the proposed interviewees was based on the fact that the identified groups handle finances and are more prone to being faced with terrorism financing cases. The people interviewed were from both genders. Female representation was 66 percent whereas male representation was 34 percent. All the respondents were drawn from Nairobi county and its environs. This was because the researcher is based in Nairobi, there were limitations of time, resources and finally, Nairobi and its environs hosts various organizations and almost all government offices relevant to this study. The interviewees were representatives chosen by the various organizations while others, volunteered in individual capacities to participate in the research without necessarily being assigned by any particular institution.

Due to the secretiveness of the information sought in this research, only 32 interviewees agreed to be interviewed. The individuals included senior researchers, legal officers, law lecturers, advocates, lawyers, students, legal assistants, bank workers, program officers at various Non-Governmental organizations, Officers at Insurance companies, economists, officers at microfinance institutions, representatives from the Law Society of Kenya, Office

of the Director of Public Prosecutions and Capital Markets Authority and the Communications Authority of Kenya.

More respondents included officers at the Advocates Complaints Commission, accountants and an individual who had been accused of terrorism financing but was acquitted. The justification for selecting such persons was based on the fact that majority of the respondents are prone to be victims of terrorism financing either primarily or secondarily while dealing with customers and clients.

One of the interviewees had been suspected of terrorism and association with Al shabaab terror organization. He was listed among persons who were given 24 hours within which to show cause why he should not be declared a specified entity.<sup>79</sup> The suspicion had arisen from the fact that he had 6 Million in his sharia bank account and it was suspected to be for terrorism purposes. The interviewee in his defence, argued that he was a businessman and the amount in the account included capital plus profits from the business. During this entire period, his bank account was frozen and he could not access any money. He was later cleared but only allowed access to his account 2 years after clearance.<sup>80</sup>

One questionnaire was used to collect data.<sup>81</sup> The questionnaire contained 14 questions covering various issues concerning the aims meant to be achieved in this study. These issues included financing of terrorism generally, financing of Al shabaab terror organization, regulatory laws on terrorism financing and enforcement statistics.

Most of the appointments with the interviewees were made via phone and majority of them preferred filling in the questionnaires at their comfort as opposed to being engaged one on one. The major challenge faced during this process was the reluctance of the respondents from the Government institutions to give information required for this research. Most of them

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<sup>79</sup> Terrorism Act, section 6.

<sup>80</sup> Kenya Gazette Notice.

<sup>81</sup> Questionnaire attached as Appendix I to this thesis.



demanded for a lot of documentation before accepting to respond to the questions. Nevertheless, upon fulfillment of the required documentation, the information they still gave was basic, reason cited being the secretiveness of the data.

The interviewees signed a letter of acceptance to be interviewed and were all assured of their identities remaining anonymous. In the analysis of the data gathered, pseudonyms were used instead of the respondents' actual names. For the Government institutions like Central Bank of Kenya, they demanded for a referral letter from the institution confirming that I was a bonafide student-pursuing master of laws and authorized to collect data. A referral letter was produced.<sup>82</sup>

For any student intending to collect data, one has to obtain a research permit from National Commission for Science and Technology (NACOSTI). The permit was obtained and authorization granted to collect data within Nairobi region.<sup>83</sup> The interviews were collected during the months of May, June and July, 2019.

Secondary data was collected majorly from scholarly articles and reports by the United Nations Security Council mostly about Al shabaab terror organization. Part of this data was gathered from the library.

In Chapter Three of this study, the case study approach was used. The chapter discussed the Al shabaab terrorist organization as the case study. The justification for discussing Al shabaab was because it had been associated with almost all terrorism attacks that have taken place in Kenya. It was hypothesized that lack of implementation of the legislation on terrorism financing is what has led to increase in terrorism attacks across the country. Hence therefore, a detailed study of financing of Al shabaab terror organization was critical in assessing the correctness or otherwise of the hypothetical question posed in this study.

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<sup>83</sup> A copy of the permit attached as Appendix vii

The case study aimed at understanding the terror organization, its sources of finances both legal and illegal. Moreover, it sought to understand why organizations or persons may opt to finance a terror organization to enable it carry out the heinous act of terrorism. The case study was one of a critical instance seeking to examine how Al shabaab finances its activities and thereafter analyzing whether the available literature has adequately taken into consideration the said sources of finances.

### **1.9 Limitations of the Study**

This study is limited to participants within Nairobi County only hence, may not portray the true image of the whole country. Nevertheless, the data collected is considered as a representation of the situation in the entire country. The rationale behind settling on Nairobi County was because firstly, it is the capital city of Kenya and hosts almost all the key organizations, Government departments and ministries relevant to this study. Moreover, most of the targeted interviewees were all based in Nairobi. On the other hand, the challenges that would come from travelling across the country like North Eastern and other remaining counties was also a consideration in settling for Nairobi.

The information sought in this study could not be gathered from Al shabaab terrorist organization since it is a criminal organization and giving out this information will only seek to expose them to the criminal hands of states. Hence, data was limited to information given by various organizations and state agencies mandated to curb terrorism financing especially in relation to Al shabaab.

### **1.10 Chapter Breakdown**

Chapter One provides a background information on terrorism financing in the world generally and narrows down to Kenya. It gives a summary of terror attacks in Kenya and set out a summary of writings of other authors on terrorism financing in a bid to set the ground for the objective of this study. It gives a brief historical background on Al shabaab terrorist

organization and how it used to finance its activities previously. Thereafter, it sets out the objectives, hypothesis and methodology to be applied in the study. It also explains the limitations of this study and justifies why this research is important.

Chapter Two discusses generally what amounts to terrorism financing and what it involves. It responds to the first research question in chapter one which was to discuss the legal framework on terrorism financing in Kenya and derive a conclusion on whether the said laws are adequate or not. It looks at the international, regional (African) and municipal legal framework governing financing of terrorism as a crime in Kenya and analyzes the available laws in Kenya on terrorism financing with a view to finding out the effectiveness or otherwise of the said laws. It further considers ways through which Kenyan Government combats terrorism financing and statistics over time on the fight against terrorism financing. Further, it discusses the implementation and challenge thereof of the available laws and relate it to either the increase or decrease in terror attacks in Kenya. In conclusion, this Chapter analyzes the field data gathered on what the interviewees thought on the adequacy or otherwise of the Kenyan laws and regulations on terrorism financing. This Chapter sets the basis upon which chapter three is discussed in that it enables the writer to make a conclusion on whether the laws and regulations discussed in this chapter two, firstly, have taken into consideration the financing aspects of Alshabaab and secondly, whether they have been effective in reducing terrorism financing against the group.

Chapter Three discusses Al-shabaab terror organization as a case study. In particular, it discusses the modes of terrorism financing for the terror organization, its history and formation, sources of its finances, recruitment of its members and how it uses the funds it collects. Through this case study, the research is able to, in light with the legal framework discussed in chapter two, understand whether the said laws have taken into consideration the modes of funding for this group and dealt with them. This helps the study to respond to the second research question which sought to find out whether the laws and regulations on

terrorism financing, discussed in chapter two, are adequate in combating terrorism financing against terror organizations including Al shabaab. Finally, this Chapter, partly through the information gathered from the field study indicates the challenges arising from the attempts to curb terrorism financing of this organization.

Chapter Four sets out the overall findings, conclusion and recommendations. It summarizes the findings derived from chapter two and three in response to the three research questions set out in chapter one of this study. It concludes on whether the objectives underlining this study have been achieved and the recommendations both short term, mid term and long term that might enable the Government of Kenya, its citizens and relevant organizations to reduce the cases on terrorism financing in Kenya.

## CHAPTER TWO

### REGULATORY FRAMEWORK ON FINANCING OF TERRORISM IN KENYA

*“Follow the money” is the only slogan that can guide Kenya in the fight against terrorism financing’<sup>84</sup>*

#### 2.1 Introduction

Financing serves as the most critical enabler for any terrorist group to realize its nefarious mission.<sup>85</sup> It involves a three-tier stage of raising funds, transferring funds to a terrorist network organization and using funds to purchase weapons or bomb making equipment.<sup>86</sup> The attrition aspect of a terror attack means that terrorists require financial support to carry out the attack.<sup>87</sup> Majority of the respondents understood terrorism financing to mean ‘funding or provision of monetary support to terrorist activities’. Jeremy<sup>88</sup>, a legal officer at the Communications Authority of Kenya, explained it as follows:

“Terrorism financing involves systems and processes that make financial resources (or their substitutes) available to terrorist activities. Often times such systems and processes link with the conventional financial services that engage money or commodity transfers.”

Linsey<sup>89</sup>, a lawyer working for a Non-Governmental Institution dealing with rights of children and based in Nairobi, also understands terrorism financing to mean;

Systems put in place legally or illegally to provide or transfer money to organizations or entities established to conduct their business and activities through violent extremisms largely grounded on religious beliefs or fundamental views.

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<sup>84</sup> Linsey, a lawyer working for Child rights’ NGO in Nairobi, interviewed on 23 July 2019.

<sup>85</sup> Celina B. Realuyo, ‘Combating Terrorist financing in the Gulf: Significant progress but risks remain’ (2015) *The Arab Gulf States Institute in Washington*.

<sup>86</sup> Eme Okechukwu Innocent, Ugwu Christian Chibuike, ‘Terrorist financing in Nigeria: A case of Boko Haram’ (2016) 2 (3) *Science Arena Publications, Specialty Journal of Psychology and Management* 41-52.

<sup>87</sup> Boaz Ganor, *Trends in Modern International Terrorism* Ch. 2 (2009) 11-41.

<sup>88</sup> Jeremy, interviewed on 29<sup>th</sup> May 2019 in Nairobi.

<sup>89</sup> *Ibid*, fn 52.

This study draws inspiration from the above definitions in that they depict that terrorism financing is not just about money transfer and receipt of the same. It is not all about money being channelled by one person or institution to another. It involves a deeper network, with systems and processes involved hence, the challenge in bringing it to an end easily.

Terrorism is funded from various sources and in many different ways.<sup>90</sup> One of the ways includes a state sponsoring a terrorist group to carry out the said attacks. Dalyan<sup>91</sup> argues that the war against financing of terrorism has led to the decline or reduction in state sponsorship of these activities and therefore as a means of remaining vigilant, the groups have resorted to private financing.

In Chapter One, this research provided a background leading to the research question sought to be investigated in this study. It was established that various scholars have written on the legal framework and instruments on terrorism financing. However, no accessible scholar has discussed or given a detailed analysis of the legislative framework on terrorism financing in Kenya. Terrorism financing was identified as the major cause of terrorism attacks hence, the need to have laws prohibiting and regulating such finances.

Therefore, the main aim of this Chapter is to indentify, discuss, and expound on the available laws and regulations on terrorism financing in Kenya. It critically analyzes the legislations passed by the Kenyan State including the various regulations together with the international instruments on terrorism financing. Kenya has ratified numerous conventions setting out principles and standards to be met through drafting of relevant national legislations and regulations thereto. Further, in line with the principles set out in the international instruments, Kenya has also passed legislations to give effect to the said guidelines. During the data collection process, it was realized that 80% of the respondents were aware of the existence of

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<sup>90</sup> Sener Dalyan, 'Combating the financing of terrorism: Rethinking strategies for success' (2008)1(1) *Defence against terrorism review* 137-153.

<sup>91</sup> Ibid.

laws on terrorism financing. This analysis considers the laws and regulations based on their provisions as regards to the three-tier process of terrorism financing.

The analysis is used in Chapter three to try and identify if, based on the financing of Al-shabaab terrorist organization, the implementation of the legislations, has been proper to curb the said financing. It aided this study in concluding whether the hypothesis drawn in Chapter One is correct or not.

An analysis of the existing laws on terrorism financing is necessary in that it aids in establishing whether there is proper and adequate legal framework on terrorism financing or if there is a gap in the law hence leading to poor implementation of the said laws. Further, setting a background on what entails terrorism financing has aided this examination especially in Chapter Three in finding out whether the available laws have taken into consideration all the possible avenues of financing for the terrorist organization hence able to curb the said sources.

To achieve the aim of this Chapter, this research discusses generally, the ways through which terrorists raise funds, how terrorists move or transfer funds and finally, the activities financed by the said funds. Through this discussion, this study considers whether the available laws and regulations on terrorism financing have taken into consideration the aspects involved in the three tier process of terrorism financing. It then concludes by indicating the loopholes, if any, identified through the discussion on the laws. Moreover, an analysis of the adequacy or otherwise of the laws, based on the field study conducted, is discussed.

Various guidelines passed by Kenyan institutions recognize the three steps used by any person intending to finance the acts of terrorism to include, firstly, placement, which involves putting the illegal profits into the financial system. Secondly, layering process, which

involves movement of the illegal funds, and thirdly, the integration process which means legitimizing the illegal funds to cover up the illegality.<sup>92</sup>

These guidelines have been passed to deal with the risk posed to various professions from insurance, capital markets to legal, since they are mostly vulnerable to terrorism and money laundering acts.<sup>93</sup> Noting the three tier process involved in terrorism financing, this chapter will discuss every step in the financial cycle and how the laws and regulations have come into play either in sealing the loophole identified in the financing process or otherwise.

## **2.2 The financing process by Terrorists**

### **2.2.1 Sources of Finances for Terrorists**

Terrorists finance their activities through many ways. One of the major sources of income is through private financing. Private financing<sup>94</sup> occurs through use of structured cash deposits and withdrawals and international fund transfers to high-risk jurisdictions. Other ways may include multiple customers conducting international fund transfers to the same beneficiary located in a high risk jurisdiction<sup>95</sup>, a customer conducting fund transfers to multiple beneficiaries located in the same high risk jurisdiction or a customer using incorrect spelling or providing variations on their name when conducting funds transfers to high jurisdictions.

Further, multiple cash deposits into personal account described as donations, a sudden increase in account activity, transfers through multiple accounts followed by large cash withdrawals or outgoing funds transfers overseas are also ways used by terrorists to finance themselves. Through these modes, the terrorists are able to raise funds to support their illegal missions across the states.

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<sup>92</sup> See The Capital Markets Act, Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets, Regulation 2.2.

<sup>93</sup> Draft guidelines by Law Society of Kenya on the Application of The Proceeds of Crime and Anti-Money Laundering Act, 2009, Par. 1.

<sup>94</sup> *Supra*, fn 10.

<sup>95</sup> A high-risk jurisdiction refers to an area where banks and other financial institutions are at a huge peril of being exposed to money laundering and terrorism-financing cases. Further, it is a term used by the Financial Action Task Force (FATF) to refer to countries which have puny Anti-Money laundering and Counter financing of terrorism state administrations.



Henry<sup>96</sup>, a legal officer at The Capital Markets Authority, describes private financing as a direct financial support through sending money to terrorist organizations or individuals. According to him, other ways through which people may finance terrorism include through providing shelter, food, arms or vehicles to support terrorism and any other facilitation.<sup>97</sup> Jeremy<sup>98</sup> on the other hand understands direct financing to include a direct transfer of finances to terrorist organizations and activities within and without conventional financial services and involves bank transfers and mobile money transfers.<sup>99</sup> He further argues that the persons or companies who engage in these direct transfers undertake it out of the willingness to get caught. An example would be for a person who deposits or withdraws a huge sum of money in a financial institution and cannot account for it.<sup>100</sup>

The internationally endorsed global standards<sup>101</sup>, set by the Financial Action Task Force, aid countries in the fight against money laundering and terrorism financing.<sup>102</sup> It recommends to a state how to deal with terrorist financing as an offence.<sup>103</sup> Further, it advises countries that apart from criminalizing financing of terrorist acts, they should also criminalize financing of terrorists and terror organizations.<sup>104</sup>

The Convention<sup>105</sup> on the other hand mandates state parties to come up with laws on identifying and detecting terrorist related funds and/or its proceeds.<sup>106</sup> Detection of funds involves dealing with the sources of finances for the terrorists. This includes the banking

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<sup>96</sup> Henry, interviewed on 29 May 2019 in Nairobi.

<sup>97</sup> Ibid.

<sup>98</sup> Jeremy, interviewed on 29 May 2019 in Nairobi.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (adopted by the FATF Plenary in February 2012).

<sup>102</sup> [http://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate)) accessed 8 May 2019.

<sup>103</sup> Ibid, Part C.

<sup>104</sup> Ibid, Recommendation 5.

<sup>105</sup> International Convention for the Suppression of the Financing of Terrorism adopted by the UN General Assembly in December 1999, signed by Kenya on 4 December 2001 and ratified on 27 June 2003.

<sup>106</sup> Ibid.

institutions where funds are transferred to the accounts of the terrorists either from legal or illegal sources and also the money held by the terrorists themselves.<sup>107</sup>

A person who directly or indirectly provides or accepts money with an intention of using it for purposes of carrying out a terror attack to kill or maim to intimidate another group of people or government commits an offence.<sup>108</sup> This definition ascertains that the offence is complete whether or not the funds are ultimately so used or an intending terrorist act is accomplished or attempted and without regard to whether the funds are of an illegal origin.<sup>109</sup> The definition of funds in the Convention was widened deliberately to leave no room for benefiting by bankers.<sup>110</sup>

Moreover, the Convention mandates state parties to come up with measures on how to identify and detect funds set aside or used for commissioning of the offences listed in the Convention.<sup>111</sup> These measures must state how the state intends to forfeit such funds and compensate victims affected as a result of the offences.<sup>112</sup> With this obligation, Kenya passed the Prevention of Terrorism Act (hereinafter referred to as '**The Act**') in 2012 with a view of responding to increasing cases of terrorism attacks across the country.

This Act does not explicitly refer to terrorism finance as so, however, it partially (not entirely) the concept when it defines it under the definition of a terrorist property:<sup>113</sup> The Act defines a terrorist property as “proceeds from the commission of a terrorist act, money or other property which has been, is being, or is intended to be used to commit a terrorist act”. Proceeds can include monetary possession or physical items. According to the above sub

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<sup>107</sup> International Finance Corporation, 'Anti-Money-Laundering (AML) & Countering Financing of Terrorism (CFT) Risk Management in Emerging Market Banks' (2019).

<sup>108</sup> Ibid.

<sup>109</sup> Eme Okechukwu Innocent, Ugwu Christian Chibuikwe, 'Terrorist financing in Nigeria: A case of Boko Haram' (2016) 2(3) *Science Arena Publications, Specialty Journal of Psychology and Management* 41-52.

<sup>110</sup> [https://www.unodc.org/pdf/crime/terrorism/Commonwealth\\_Chapter\\_13.pdf](https://www.unodc.org/pdf/crime/terrorism/Commonwealth_Chapter_13.pdf) accessed 7 May 2019.

<sup>111</sup> International Convention for the Suppression of the Financing of Terrorism (1999) Article 8.

<sup>112</sup> Ibid.

<sup>113</sup> Prevention of Terrorism Act (2012) s. 3.

section, it is understood that terrorists upon gaining or acquiring proceeds from a particular terror attack, they can go ahead and use the same proceeds to carry out another attack.

This means that resources acquired from terrorism attacks can be recycled and used for a similar attack. With this notion, it means that these financial resources are not stored anywhere or if they are, then they are not kept for a longer period of time, hence, a hurdle to a government agency which intends to curb such sources of terrorism finances.

Further, money used, or is in the process of being used or which the terrorists intend to use for the commission of a terrorist attack amounts to a terrorist property. Therefore, this definition covers finances, which are in the custody of the terrorists and are to be used to carry out terrorism attacks. The above sub definition of a terrorist property is silent on the sources of the finances and generalizes that from whichever source the money is derived from, provided it is intended to be used for terrorism, it amounts to a terrorist property. Sub section (b) defines a terrorist property as “money or other property, which has been, is being, or is intended to be used by a terrorist group”.

This sub-definition affirms that monetary resource amounts to a terrorist property. It adds the specification of a terrorist group being the one using that money. However, in the opinion of this study, this definition is incomplete or rather it leaves a room for questioning. This is based on the fact that in as much as it describes terrorist property to refer to money used by a terrorist group, it does not explain or rather conclude whether it is money used to commit a terrorist act or whatever money a terrorist has, not necessarily to be used for purposes of carrying out terrorist acts.

Nevertheless, it creates an offence of financing acts of terrorism. The actus reus for this offence to suffice requires the suspect to have collected, provided, attempted to collect or provide funds either by him/herself for commissioning of acts of terrorism. The mental element of this offence requires a person to have the intention, knowledge or simply, to have

fair reasons convinced that such funds are to be used in commissioning a terror attack. Upon conviction, the court is allowed to imprison the guilty person to twenty or less years.<sup>114</sup>

Sub section (2) builds upon the offence created under sub section (1) above and states that the prosecution of persons for such an offence will proceed regardless of whether the intended purpose took place or not. That means that provided funds are made available with such an intention for it to be used for terrorism attacks, whether the attack is carried out or not, the financier will still be liable for such an offence.<sup>115</sup>

An analytical consideration of the above section of the law shows that the drafters of this Act intended to close all the loopholes that can arise out of such acts of financing. Further, the intention of the drafters, at a closer look, can be said to have intended to make this offence look so strict so as to act as a way of making persons not to try and finance such acts. Whether or not this intention has been achieved is a question for consideration in chapter three as we analyze the statistics of terrorism attacks and the results of such incidences thereafter, after the coming into effect of the Prevention of Terrorism Act.<sup>116</sup>

The second definition of a terrorist property under the Act<sup>117</sup> is group specific and speaks to a terrorist group. In comparison to the first definition, the initial one does not specify a personality. It therefore leaves a blank cheque that a person, not necessarily a terrorist, who has in possession, proceeds from the commission of a terrorist act or financial resources to be used in terrorist attacks, will be considered to be in possession of a terrorist property. Therefore, any offence linked to possession, will befall on such persons.<sup>118</sup>

The third definition describes a ‘terrorist property’ as “any property belonging to a specified entity”. A specified entity is an entity which upon investigation by the Inspector General of Police, has been recommended to the Cabinet Secretary to be declared as having committed,

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<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> (2012).

<sup>117</sup> Prevention of Terrorist Act, 2012.

<sup>118</sup> Ibid.

attempted to carry out, or took part in a terrorist act whether on its own volition or under instruction by another third party.<sup>119</sup>

This definition connotes that once an entity has been declared as a specified entity, then all its property including its finances will be considered as a terrorist property. The justification for comprehending the definition of a terrorist property hails from the fact that to appreciate the law regulating terrorism financing in Kenya, it is important to conceptualize what terrorist property entails since it is this property which the government seeks to regulate to curb acts of terrorism.

The wide scope of definitions on what entails a terrorist property in the opinion of this study is somehow sufficient in curbing terrorism financing. However, in the chapters that follow, this study sought to investigate whether the challenge has been implementation of the provisions of this law or the definition is insufficient as regards to creating an avenue through which terrorism finances can be retrieved or frozen.

Another mode of funding a terror group is by way of financing the recruitment process. The Financial Action Task Force<sup>120</sup> in its report launched on January 2018 explains in depth the aspect of financing of recruitment for terrorist purposes. In considering the methods involved in the recruitment process the report argues that terrorists are recruited majorly through religious organizations, online recruitment, prison set up, and militants from across the border of the targeted state.<sup>121</sup>

The recruitment process requires funds and the amount depends on whether the recruitment is active or passive.<sup>122</sup> Active recruitment requires fewer resources since it is a direct contact with the person to be recruited and further in most cases, it involves recruiting of

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<sup>119</sup> Prevention of Terrorism Act No. 30 of 2012 (2012) s. 3.

<sup>120</sup> Financial Action Task Force Report, Financing of recruitment for terrorist purposes (2018).

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

professionals suitable for the needs and demands of the terrorist group.<sup>123</sup> The only expense required may be the cost for the upkeep of the recruiter, which comes from a larger financial infrastructure or donations from followers.<sup>124</sup>

The second mode of recruitment is passive and does not involve direct contact with the persons to be recruited. This process majorly takes place online through websites or sharing of leaflets and materials, which possess information concerning the terrorist organization. The need to maintain the digital platform requires continuous funding. Through the websites, as a means of protecting their identities, the terrorist organizations use password protection and restrict access to the internet chat groups, at the same time making sure that access allowed, is fair enough to allow charitable organizations to come in and support them. In conclusion, the main sources of funding for terrorist recruiters include financial support from the terrorist organizations themselves, donations from charitable organizations and proceeds from criminal activity especially during the commission of the terrorist attacks.<sup>125</sup>

Under the Kenyan law, recruitment or facilitation of recruitment of persons into a terrorist group or for purposes of involvement in terrorism activities amounts to an offence punishable upon conviction to 30 or less years imprisonment.<sup>126</sup>

Terrorists can establish and come up with corporations and organizations and register them. Upon registration, these organizations are used to solicit donations online through pretence that they are in need of humanitarian assistance. Various organizations or donors will definitely offer financial support with without knowledge on how the said resources will be used.<sup>127</sup>

The justification for use of charities lies in the fact that most of the charitable institutions are international and enjoy a worldwide recognition hence providing a framework both nationally

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Prevention of Terrorism Act, s.13.

<sup>127</sup> Supra, fn 16.

and internationally for carrying out various transactions.<sup>128</sup> These organizations are duped into diverting funds through fraudulent means for example transferring funds to the terrorist organizations to support orphans or vulnerable persons in the society.<sup>129</sup>

Samima<sup>130</sup>, an Insurance Underwriter in an Insurance Company located in Westlands, Nairobi, explains that the use of charities or Non-Governmental Organizations for raising of funds thrives for these terrorist organizations because there is protection mostly for the donors and recipients.<sup>131</sup> In Kenya, the Non-Governmental Organizations Act<sup>132</sup> and the newly enacted Public Benefit Organizations Act<sup>133</sup> regulate and oversee the affairs of the charitable organizations. However, there are organizations which are not required to be registered under the Acts hence, creating an avenue for manipulation by terrorists and their financiers.<sup>134</sup>

Terrorists also raise funds either from legitimate sources, criminal proceeds, safe havens, failed states or state sponsorships.<sup>135</sup> Legitimate sources include contributors who have the best of intentions to support a particular organization not knowing that they are funding a terror attack.<sup>136</sup> States are also sources of funding for terror organizations especially in cases whereby a state intends to carry out a revenge attack upon another state.<sup>137</sup>

Mike<sup>138</sup>, a lecturer of law at the Catholic University of Eastern Africa, explains this indirect financing as follows:

“It includes more covert forms of support that take into consideration the criminal character of terrorist activities. Indirect measures may involve

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<sup>128</sup> Supra fn 19.

<sup>129</sup> Ibid.

<sup>130</sup> Samima, interviewed on 22 July 2019 in Nairobi.

<sup>131</sup> Ibid.

<sup>132</sup> (1990).

<sup>133</sup> Act No. 18 of 2013.

<sup>134</sup> Ibid.

<sup>135</sup> Financial Action Task Force, Terrorist financing (2008).

<sup>136</sup> Crimm Nina J., “High Alert: The Government’s war on the financing of terrorism and its implication for donors, domestic charitable organizations, global philanthropy” (2004) 45(134) *William and Mary Law Review* 1342-1450.

<sup>137</sup> Jersey Financial Services Commission, ‘The fundamentals of terrorist financing’ (2016).

<sup>138</sup> Mike, interviewed on 6 June 2019 in Nairobi.

provision of support infrastructure such as vehicles, shelter, food, arms and means of communication. It may also take money-laundering dimensions involving injection of moneys intended for terrorism into legitimate enterprise with the intention of outward channelling into terrorist activities off the conventional financial grid.<sup>139</sup>,

He further explains that other ways through which people finance terrorism include engaging with persons linked to terrorism in business activities, offering training opportunities for terrorists and their ideologies, offering money-laundering opportunities to terrorist-linked cash or dealings with terrorists as non-benefit organizations whose activities are indirectly linked to terrorism.<sup>140</sup>

Self-funding is another means of raising funds for terrorists and in this event they fund themselves or receive funds from family and close relatives.<sup>141</sup> When terrorists engage in legitimate businesses and generate income, it may be very difficult to detect them especially if the businesses are carried out in different geographical locations from where the terrorists reside or carry out the attacks.<sup>142</sup> Ibrahim<sup>143</sup>, an Advocate practising in Nairobi, explains that kidnapping persons and demanding ransom before release of the persons kidnapped is also another mode used to finance terrorism.

Terrorist groups engage in wildlife poaching as a lucrative avenue for them to get funds for financing of their terrorism activities.<sup>144</sup> Through the act of poaching wild animals, they engage in the business of selling or illegally exporting animals' horns, sale of bush meat and trade of ivory. It is reported that the black market collects at least 65,000 dollars per kilogram from sale of rhino horns and 3,000 US Dollars from sale of ivory.<sup>145</sup>

In Northwestern Kenya, Al shabaab, a terrorist organization exploits elephants for purposes of getting ivory which grants them a monthly revenue of between 200,000-600,000 US

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<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid

<sup>142</sup> Supra, fn 2

<sup>143</sup> Ibrahim, interviewed on 29 May 2019 in Nairobi.

<sup>144</sup> Elema Wario Saru, *Poaching and the Funding of International Terrorism: A case study of Kenya* (Thesis, University of Nairobi 2016).

<sup>145</sup> Jennifer G. Cooke and Derek Schlickeisen, 'Africa's wildlife poaching and trafficking crisis' (2015) *Center for strategic & International Studies*.



Dollars.<sup>146</sup> Kenya has illegalized hunting of protected animals and there are grave penalties under the Act.<sup>147</sup> Whether or not these cases have reduced is to be determined based on the scale of growing cases of terror attacks in Kenya which are still being financed.

There are other illegal activities which terrorists undertake to get financial resources. One of them include the act of kidnapping.<sup>148</sup> Kidnapping falls under one of the ways through which terrorists use to get money for their heinous acts and activities.<sup>149</sup> Through kidnapping, terrorists seek for ransom in form of monetary payments in order to release the persons held hostage.<sup>150</sup> They may even kidnap a person and demand for release of weapons or other instruments they need to carry out their activities.<sup>151</sup>

The Prevention of Organized Crimes Act<sup>152</sup> criminalizes the act of kidnapping a person by a member of an organized criminal group with an intention of extorting from the victim. Further, providing, collecting, making or transmitting property used for commissioning of an organized crime by a criminal group amounts to an offence. Using, causing or permitting another person to use property meant for carrying out an organized crime also amounts to an offence under this Act.<sup>153</sup> Further, the law<sup>154</sup> specifies the punishment related to carrying out the acts stipulated under section 3 to a fine of Ksh. 5,000,000 or 15 years imprisonment or both.

Another possibility of terrorism financing is the use of virtual environments. A virtual environment is a loose term used to refer to cyber space, artificial and virtual reality. Every activity in such an environment is done in a digital atmosphere. It is an abstract space hence,

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<sup>146</sup> Tom Maguire and Cathy Haenlein, 'An illusion of complicity: Terrorism and the Illegal Ivory Trade in East Africa' (2015) Occasional Paper Series.

<sup>147</sup>The Wildlife (Conservation and Management) Act, Cap. 376 Laws of Kenya (Rev. 2009).

<sup>148</sup> Eth Zurich, 'Kidnapping for ransom as a source of Terrorism funding' (2013) 141 *CSS Analysis in Security Policy*.

<sup>149</sup> Brian Michale Jenkins, 'Does the U.S. No-Concessions Policy deter kidnappings of Americans' (Rand Corporation 2017).

<sup>150</sup> James Forest, 'Global Trends in Kidnapping by Terrorist Groups' (2012) 24(3) *Global Change, Peace & Security* 311-330.

<sup>151</sup> US Army Training and Doctrine Command, 'Hostage –Taking and Kidnapping Terror in the COE' (2008).

<sup>152</sup> Act No. 6 of 2010, section 3.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid, section 4.

anonymous.<sup>155</sup> Based on its anonymity, it poses a threat to states being able to fight against financing of terrorism. Therefore, virtual environments create an avenue for soliciting of funds for terror attacks. However, the said processes are slow and take longer for the funds to be processed and laundered. Nevertheless, states must ensure they regulate this mode of financing to curb terrorism.<sup>156</sup>

Terrorists create a website and include information concerning how the terrorist organization began, membership and how one can become a member, accounts and its leadership. However, these websites do not indicate the aspect of engagement in illegal and violent activities or how it is conducted. Moreover, in the websites, they will put influential content sought to attract members of the public and also target citizens of the enemy state.<sup>157</sup>

The messages and propaganda spread on the websites are aimed at expanding the fundraising networks. Through digital fundraising, donors have sent donations via online payment services to terrorist organizations.<sup>158</sup> Further, terrorists use dark net for raising funds, transferring money, illegal purchase of explosive materials and weapons. For examples, Jihad terrorist organization has been reported to be using 'bitcoin crypto currency' for purposes of facilitating their members' economic demands and attempting to evade the western banking network.<sup>159</sup>

Facilitation and promotion of a terror attack through any method whatsoever, is outlawed in Kenya.<sup>160</sup> This includes both providing the funds and receiving them.<sup>161</sup> The mental element for these offences is knowledge of the purpose of facilitation whereas the actual element is providing money or access to funds for use in commissioning of terrorist attacks. These

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<sup>155</sup> J.N. Neves & A. Camara, Virtual environments and GIS Ch 39, 557-562.

<sup>156</sup> Jill Slay et al, 'Money Laundering and terrorism financing in virtual environments: a feasibility study' (2014) *Journal of money laundering control* 50-75.

<sup>157</sup> Gabriel Weimann, 'How modern terrorism uses the internet' (2004) United States Institute of Peace Special report 116.

<sup>158</sup> Bruce Hoffman et al, 'Terrorists and the internet' (2009) Council of foreign relations.

<sup>159</sup> Gabriel Weimann, 'Going darker? The challenge of dark net terrorism' (2018) Woodrow Wilson International center for scholars.

<sup>160</sup> Prevention of Terrorism Act (2012) section 21(a).

<sup>161</sup> Ibid, section 21(f) and (g).

offences, if confirmed, result in one being imprisoned for a period not more than thirty years.<sup>162</sup>

Moreover, Kenya has passed the Computer Misuse and Cybercrimes Act<sup>163</sup> to handle and deal with cyber-related crimes including identity theft and impersonation, and cyber terrorism.<sup>164</sup> The crime of cyber terrorism attracts a penalty upon conviction of a fine of 5 Million shillings and/or an imprisonment for a term of ten years.<sup>165</sup>

Premium financing has been reported to be another avenue through which terrorist organizations finance their activities.<sup>166</sup> This occurs through use of illegally acquired funds to pay premiums and thereafter receive compensation through clean funds. In a nutshell, insurance companies may act as a cleaning avenue for dirty money belonging to terrorist organizations.<sup>167</sup>

The insurance Regulatory Authority has come up with guidelines that can aid the insurance industry to combat terrorism financing. These identified ways include registering with the Financial Reporting Centre and providing annual financial reports, informing the Centre transactions worth 10,000 dollars and above, having in place a risk rating approach for customers and coming up with measures to ensure legitimacy of all sources of funds.<sup>168</sup> The regulations however, do not indicate what measures ought to be in place to confirm the legitimacy or otherwise of these sources of funds.

Kellim<sup>169</sup>, a legal officer and Tax analyst at Kenya Revenue Authority, opines that the laws in place on terrorism financing are good, however, there is need to do more since there is currently funding through crypto-currency or digital currency which the government of

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<sup>162</sup> Ibid.

<sup>163</sup> (2018).

<sup>164</sup> Ibid, section 33.

<sup>165</sup> Ibid.

<sup>166</sup> Joseph Owuor, 'Anti-Money Laundering & Combating Financing of Terrorism: Training for Insurance Agents'.

<sup>167</sup> Guidelines to the Insurance Industry on Implementation of the Proceeds of Crime and Anti-Money Laundering Act and the Prevention of Terrorism Act (April 2016) pg 6.

<sup>168</sup> Ibid.

<sup>169</sup> Kellim, interviewed on 19 June 2019 in Nairobi.

Kenya may not be aware of hence, making such cases against this terrorist organization difficult to investigate.<sup>170</sup>

In the extremist of ways, Monica<sup>171</sup>, an economist and program analyst, opines that lowering of legal regulations against terror funding by a government can be a way of creating an avenue for continued financing of terrorism.<sup>172</sup>

Private sectors also create an avenue whereby terrorists engage in financing their activities. Forman<sup>173</sup> proposes that perhaps encouraging public and private sector partnerships will be able to combat terrorism financing and reduce those cases. With strong public-private partnerships, terrorist financing cases will be reduced.<sup>174</sup> In Kenya, there is a Public Private Partnerships (PPPs) Act<sup>175</sup>, which regulates and allows for the creation of these partnerships. With an effective regulatory framework for PPPs in Kenya, the long-term contract between public and private sectors may lead to a reduction in terrorism financing cases<sup>176</sup> since terrorism is a political risk and threat to public-private partnerships.<sup>177</sup>

### **2.2.2.1 Challenges faced in the identification and curtailing of the sources of funds for terrorists**

Once the sources of terrorist funds have been identified, various agencies for example the banking facilities and the financial reporting centre need to gather sufficient information to warrant arrest and prosecution of the suspects. poor collection of evidence poses a challenge since in most instances it is always occasioned by inadequate forensic investigatory

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<sup>170</sup> Ibid.

<sup>171</sup> Monica, interviewed on 11 June 2019 in Nairobi.

<sup>172</sup> Ibid.

<sup>173</sup> Marcy M. Forman, 'Combating terrorist financing and other financial crimes through private sector partnerships' (2006) 9(1) *Journal of Money Laundering Control* 112-118.

<sup>174</sup> United Nations Security Council, Letter dated 14 March 2019 from the Permanent Representative of France to the United Nations addressed to the Secretary General on Threats to International peace and security caused by terrorist acts Preventing and combating the financing of terrorism.

<sup>175</sup> Act No. 15 of 2013.

<sup>176</sup> Beryl Zoraima Nalo, 'Establishing an effective regulatory framework for PPPs in Kenya' (LLM Thesis, University of Nairobi 2018).

<sup>177</sup> Anjarwalla & Khanna, 'Project Finance' (2019).

capacities. Inadequate specialized investigators or qualified personnel is the challenge towards being able to implement the said laws.

The other challenge faced in this fight is the mutating nature of terrorism financing particularly involvement at crypto currency and social media.

Lack of awareness of the laws poses a challenge to its implementation. There has been a little public awareness on the exact depth of the problem faced by terrorism financing. This lack of constant awareness creation poses a challenge in the implementation of these laws. This is mostly seen by the financial bodies where terrorists may take advantage to clean their dirty money through money acquired through money laundering or terrorism financing.

Terrorism financing is dynamic hence requires a department or persons who are always researching and on the lookout for new ways through which these terrorists acquire money in order to control the sources.

Inability of the existing laws on terrorism financing to deal with the indirect ways through which Al shabaab funds its activities is another challenge faced in reducing these cases. Our laws are generic in nature since they deal with proceeds of all forms of crime with terrorism being one of them, hence not crime specific. Moreover, knowing and defining the thin line between terrorism financing transaction and an ordinary transaction has posed a challenge in the implementation process.

It is noteworthy that a respondent from the Ethics and Anti Corruption Commission indicated during the interview that the reason why the commission has not handled a case on terrorism financing is that it is impossible to find out whether the funds linked to corruption are for terrorism. The corruption faced at the enforcement authorities and the way they handle the evidence placed before them on terrorism financing is a challenge in the successful implementation of these laws.

Language barrier has also become a challenge in the awareness of ability to inform people of what the laws state. This hails from the fact that most suspects are foreign nationals, especially Somalis who do not understand English, hence do not know the repercussions of such offences.

### **2.2.2 Movement of funds by terrorists**

Terrorists use various methods and modes of cash transfer to move their funds from one place to the other. These methods may include use of intra-account transfers, wire transfers, use of money service businesses, bulk cash couriers, hawala and crypto currencies.<sup>178</sup> Intra account transfers basically involves the banking or financial institutions.<sup>179</sup> In order to avoid being caught in the process, terrorists engage in bulk cash smuggling or even smuggling of oil and informal value transfer systems such as hawala.<sup>180</sup>

The benefit of using formal and legalized financial systems is hinged on the fact that this method provides an easier way for terrorists to send money to fellow terrorists to their bank accounts.<sup>181</sup> The only challenge and why terrorists fear this method is the due diligence involved and requirement for accountability of huge sums of money by the banks.<sup>182</sup> Hence, they have generally resorted to use of traditional banking as a source of transferring their funds.<sup>183</sup>

The Act<sup>184</sup> mandates any person who has information concerning transactions or proposed transactions on properties by a terrorist group, to submit the said information to the financial reporting centre, a body instituted to investigate cases and sources of terrorism financing.<sup>185</sup>

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<sup>178</sup>OECD, 'Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors(2019).

<sup>179</sup> Hamed Tofangaz, 'Rethinking terrorist financing; where does all this lead? (2015) 18(1) Journal of Money Laundering Control.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Celina B. Realuyo, 'Following the Terrorist Money Trail' (2011) 10(2) The Quarterly Journal 105-124.

<sup>184</sup> Prevention of Terrorism Act, 2012.

<sup>185</sup> Supra, fn 146.

Failure to disclose such information leads to a conviction and imprisonment for a maximum of 7 years or a fine of 1 Million shillings.<sup>186</sup> Lastly, the Cabinet Secretary has authority to prohibit persons or financial institutions from providing funds to persons suspected of planning to carry out terror attacks within or without Kenya.<sup>187</sup>

The International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation<sup>188</sup> proposes that a state should have in place ways of carrying out customer due diligence, keeping records of customers by financial institutions, being keen on risks associated with new technologies and assessing the sources of money wired to various financial institutions.<sup>189</sup> Further, the recommendations require Kenya to come up with ways through which suspicious transactions can be reported, tipping off can be identified and how to balance between confidentiality and disclosure of relevant information.<sup>190</sup>

On how to carry a successful due diligence on customers and various persons, institutions have come up with guidelines on how they can identify a trail of a suspected transaction or funds intended to be used for terrorism. It is noted that terrorists require money to carry out their activities. Since it is an illegal activity, they will often seek for ways of disguising themselves in order for the governments not to identify them. The regulations therefore require the institutional bodies to come up with a risk based approach in dealing with such a dilemma especially since in most cases the sources are anonymous.

Some of the risk based approaches include use of market intermediaries, consideration of relevant data from the United Nations, conducting due diligence with their customers<sup>191</sup>, proper record keeping<sup>192</sup>, cross-checking border transactions and finally, use of surveillance

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<sup>186</sup> Ibid.

<sup>187</sup> Ibid, section 45.

<sup>188</sup> Supra, fn 101.

<sup>189</sup> Supra, fn 153.

<sup>190</sup> FATF Recommendations, recommendation 20.

<sup>191</sup> The Capital Markets Act, Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets (2015) Regulation 5 & 6.

<sup>192</sup> Ibid, Regulation 7.

staff at their various securities exchange points.<sup>193</sup> In the event of a new technology being introduced or a non-facial financial transaction being undertaken, the intermediaries are expected to come up with policies and procedures meant to avert risks that may be associated with such engagements.<sup>194</sup>

In order to carry out a successful inquiry or investigation into a suspected case of an illegal transaction, tipping off information on terrorism financing to an intended suspect, one being investigated by the Authority or any other third party is illegal.<sup>195</sup> Who amounts to a customer is given a wide definition to include a beneficial owner, the beneficiaries, and even the beneficial owners of the beneficiaries.<sup>196</sup> This allows for a thorough investigation and ability to identify the intended motives of the terrorists or their financiers.

For the Insurance Companies, in order to conduct due diligence for both new and existing clients, the Board of Directors for a particular company is mandated to come up with the information to be availed by a customer upon profiling. Through this requirement, these institutions are prohibited from holding anonymous accounts.<sup>197</sup>

The Regulations regulating the Capital Markets Authority, require that upon receipt of the sanctions list from the United Nations, the Authority hands it over to the market intermediaries who shall then conduct a check on the persons named. Upon proof of connection to terrorism financing, the market intermediaries shall proceed to freeze the listed persons' accounts. Upon freezing of the funds, the intermediaries shall then file a suspicious transaction report with the Financial Reporting Centre for further action.<sup>198</sup>

Where a customer is unwilling to provide information necessary to ascertain the sources or otherwise of the funds, the Capital Markets Authority is allowed to conduct further

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<sup>193</sup> Ibid, Regulation 4.

<sup>194</sup> Ibid, Regulation 8.

<sup>195</sup> Ibid, regulation 16.

<sup>196</sup> Ibid, regulation 18.

<sup>197</sup> Guidelines to the Insurance Industry on Implementation of the Proceeds of Crime and Anti-Money Laundering Act and the Prevention of Terrorism Act, 2016.

<sup>198</sup> Supra, fn 169.



investigations concerning the customer to ascertain whether he or she intends to engage in terrorism financing. Unusual acts linked to a customer's account for example use of an account for non-intended purpose or conducting transactions with an unknown counterparty also amounts to a suspicious transactions and the regulations allow the intermediaries to report such cases to the relevant authority.<sup>199</sup>

The Insurance Regulatory Authority also mandates insurance institutions to ensure they report any suspicious information on terrorism financing to the Financial Reporting Centre and not disclose it to unauthorized persons.<sup>200</sup> To identify suspicious transactions, the insurance institutions are required under regulation 15<sup>201</sup> to come up with mechanisms which can detect such transactions. Suspicious transactions may include unusual transactions carried out by a particular customer either through payments, deposits or otherwise.<sup>202</sup>

The institutions must keep a database of all listed persons and organizations in the United Nations Sanctions List in a bid to ensure they do not engage in more dubious transactions with the institutions.<sup>203</sup> These lists must be availed to the subsidiaries and branches of all insurance companies.<sup>204</sup> Further, training of personnel to be carried out on how to identify suspicious transactions related to terrorism financing and how to tackle them is required.<sup>205</sup>

Terrorists may want to move funds through depositing it in an Advocate-Client Account. Advocates are required, through the draft guidelines<sup>206</sup>, to have systems and measures enough to protect them against illegal transactions. These measures include knowing their clients,

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<sup>199</sup> Ibid.

<sup>200</sup> Guidelines to the Insurance Industry on Implementation of the Proceeds of Crime and Anti-Money Laundering Act and the Prevention of Terrorism Act (2016), regulation 13.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid, regulation 16.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid, regulation 17.

<sup>206</sup> Draft guidelines by Law Society of Kenya on the Application of The Proceeds of Crime and Anti-Money Laundering Act, 2009.

ascertaining the legitimacy of the financial sources of the clients and refusing to handle briefs where they suspect may lead them to violating the laws against terrorism financing.<sup>207</sup>

On how to carry out these measures, Advocates are required to carry due diligence when it comes to high risk clients especially those who engage in non-facial transactions, depositing and withdrawing huge transactions and those indicated in the list by Financial Action Task Force. These measures include seeking approval from the managerial team in the office, having detailed client information and seeking the assistance of financial institutions involved in the transaction to ascertain the source of funds.<sup>208</sup>

The ways through which one can ascertain the legitimacy of the sources of funds include obtaining documents from the client to prove their sources of funding especially in commercial transactions, avoiding provision of banking services to the clients and only holding money for the clients for legitimate purposes.<sup>209</sup> The professionals must then ensure they take necessary steps to ensure they don't fall victims of money laundering and terrorism financing when it comes to new technologies.<sup>210</sup>

The informal method of transferring funds such as smuggling is used majorly by terrorists in countries with no existing financial institutions, or, if they exist, they are neither working nor functional.<sup>211</sup> Moreover, terrorist can also move funds physically through smuggling of metals or engage in trading opportunities hence, able to move wealth across regions easily including the inter country borders.<sup>212</sup>

Once a terror attack or terrorist related offence has been committed, a terrorist organization or its members may decide to move proceeds of their crimes to any location within or without

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<sup>207</sup> Ibid, Part 3, Regulation 89.

<sup>208</sup> Ibid, regulation 4.5.

<sup>209</sup> Ibid, regulation 6.

<sup>210</sup> Ibid, regulation 15.

<sup>211</sup> Celina B. Realuyo, 'Following the Terrorist Money Trail' (2011) 10(2) The Quarterly Journal 105-124.

<sup>212</sup> Ibid.

Kenya. Section 7<sup>213</sup> states that a person who knowingly transports, transmits, transfers or receives or attempts to transport, transmit, transfer or receive a monetary instrument or anything of value to another person, with intent to commit an offence, commits an offence and is culpable under the law.<sup>214</sup>

Further, the Act<sup>215</sup> gives a guideline on how money in excess of 10,000 US dollars can be conveyed from or to Kenya. Before the conveyance, the sender must seek approval from the responsible officer and that financial institution must inform the Financial Reporting Centre. Failure to report such a transaction or misrepresenting the figures involved amount to an offence and is punishable under the law. Section 17<sup>216</sup> indicates that this Act overrides all other acts, which provide secrecy or non-disclosure of financial transactions' information.<sup>217</sup>

The Proceeds of Crime and Anti-money Laundering Regulations<sup>218</sup> prohibit movement of funds for terrorist activities and require that persons or entities conveying into or outside Kenya money worth or exceeding 10,000 US dollars or its equivalent in any other currency must declare the particulars to a customs officer at the entry or exit port in a prescribed form.<sup>219</sup> This declared form must be submitted to the director of a financial reporting centre and failure to report the true particulars of such a transaction is unlawful.<sup>220</sup>

#### **2.2.2.2 Challenges faced by Government Authorities in preventing the movement of funds by terrorists**

With the strict and available measures and procedures on curtailing movement of funds from one area to another, the challenge faced with ensuring the relevant government departments prevent such flow of terrorist property is the lack of coordination among Government

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<sup>213</sup> Proceeds of Crime and Anti-Money Laundering Act, Cap 59B Laws of Kenya.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid, section 12.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> Legal Notice No. 59 of 2013.

<sup>219</sup> Ibid, section 8.

<sup>220</sup> Ibid.

ministries, departments and agencies. In most instances these groups are involved in the investigation and enforcement of the laws hence pose a challenge to the implementation of these laws in that every department has his own method of dealing with these case hence may lead to clashing of duties.

Inadequate funding for specialized investigations to curb the ever changing field of terrorism financing is also another challenge. This research agrees with the assertion that the funds set aside to fight terrorism are insufficient. A look at the analysis in chapter 3 on the Kenyan budget, money is set aside for national security and terrorism is part of the many items under the bracket of security. It therefore becomes the sole business of the security department to decide how much to set aside for terrorism. Perhaps the reason why there are no records on how much Al shabaab spends in a terror attack, is because they sit back to strategize on how to attack Kenya taking into consideration the amount of money and revamping of security personnel they make in a particular financial year. Severe budgetary constraints to the law enforcement agencies are therefore a hurdle encountered during the implementation process.

### **2.2.3 Financial requirements and allocation of funds to terrorist activities**

Terrorist gangs require sufficient funding to enable them support their followers across the nations, ensure military training camps are effectively funded, and provide kickbacks to the governments offering support to them.<sup>221</sup> It is noteworthy to state that the funds required by terror groups to finance a terror attack are not much. However, most of the funds are needed for maintenance of the terror organization and for sustainability of its activities.<sup>222</sup> Furthermore, the funds required must be sufficient to pay salaries, compensate members,

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<sup>221</sup> Jacob N. Shapiro and David A. Siegel, 'Underfunding in Terrorist Organizations' (2007) *International Studies Quarterly* 405-429.

<sup>222</sup> Emilie Oftedal, 'The financing of jihadi terrorist cells in Europe' (2015) *Norwegian Defence Research Establishment*.

carry out the various operations, pay bribes, train and indoctrinate new members, spread propaganda through the media and finally, pay for other social services.<sup>223</sup>

Terrorists may also require funds for purposes of holding meetings. Under the Act,<sup>224</sup> facilitation of a meeting set to organize or plan for commission of a terror attack is prohibited.<sup>225</sup> The mental element for the offence under section 25 is to have knowledge or simply to have a reason to believe that the facilitation is for a meeting set to discuss how to carry out acts of terrorism. The sentence to be imposed upon conviction of this offence is a maximum of 20 years.<sup>226</sup>

Facilitation means provision of finances and services for purposes of ensuring a particular meeting take place seamlessly without any problem. In light of this discussion, a person or organization decides to issue funds, a meeting place or resources required for the gathering to be a success. The agenda of the meeting may be to discuss and plan a terror attack. Moreover, it also includes inviting persons to attend the meeting. Thus the law takes this into consideration.

The amount of money required for terrorist recruitment in for example, disseminating materials, may cost between 1000-6000 Euros as printing costs.<sup>227</sup> However, it is argued that recruitment costs are highly insignificant as compared to other costs to be incurred by a terrorist organization.<sup>228</sup> A case study of ISIS indicates that in 2014, its finances were 1.9 Billion dollars whereas in 2016 it was 870 Million dollars. This is justified by the fact that states are coming up with ways to try to block the financing of such organizations. It funds itself through huge sale of oil products (40 million dollars), ransom collected from

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<sup>223</sup> Jersey Financial Services Commission, 'The fundamentals of terrorist financing'.

<sup>224</sup> Prevention of Terrorism Act, 2012.

<sup>225</sup> Ibid, section 25.

<sup>226</sup> Ibid.

<sup>227</sup> Financial Action Task Force, 'Financing of recruitment for terrorist purposes'(2018).

<sup>228</sup> Ibid.

kidnapping (45 Million dollars), foreign donations (5 Million dollars), farming (200 Million dollars), taxation (2 Million dollars) and theft (3.7 Million dollars).<sup>229</sup>

Intentional recruitment or facilitation of recruitment of new members into a terror organization is an offence under the Act.<sup>230</sup> Further, intentional payment or issuance of funds for purposes of participation in a terrorist attack is also considered as illegal. The actus reus of this offence is providing funds for use in recruitment of new members into the terror organizations. The mental element for the offence to be confirmed, the accused person must have the knowledge that the funds produced or offered will be used in recruitment of persons to either be terrorists or participate in the commission of acts of terror. This offence if confirmed, leads to a conviction of not more than thirty years. Hence, this section criminalizes the financing of recruitment of terrorists into their various destinations.<sup>231</sup>

Items that may be required by terrorists include weapons, firearms, explosives and vehicles or aircrafts depending on the kind of attack they intend to do. All these items including many more others require finances to be owned by the terrorists. Even if the group or persons are in a capacity to afford these elements for carrying out an attack, the items require funds. Finances are therefore involved in every step of a planned terror attack.

Once funds have been allocated for undertaking a particular terror attack, the identified terrorists prepare to carry out the said action. The Prevention of Terrorism Act makes it an offence to facilitate the commissioning of a terrorist attack. The mental element of this offence requires a person to have the intention to commit a terrorist act.<sup>232</sup> For the offence to be complete, the actual elements that must be confirmed include advocating, promoting,

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<sup>229</sup> Agnes Levallois, Jean Claude Cousseran et al, 'The financing of the 'Islamic State' in Iraq and Syria (ISIS)' (2017) European Parliament's Committee on Foreign Affairs.

<sup>230</sup> Prevention of Terrorism Act 2012.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid, section 9A.

advising or facilitating acts of terrorism including the acts leading to the offence being committed. A culpable person is to be imprisoned for twenty or less years.<sup>233</sup>

The Act is silent on what amounts to facilitation of an act of offence. It is therefore assumed that facilitation means to advance, aid or assist.<sup>234</sup> Nevertheless, in looking at section 9, the drafters ensured that individuals who do not participate in carrying out the terror attack itself, but take part in the preparatory process leading to the commission of the terror attack, are also brought to book.

The internet as another element of terrorist activities also forms a platform whereby terrorists conduct most their activities ranging from recruitment, radicalization of persons, incitement of persons to join terror groups, financing of terrorism activities, training of new converts, planning of terror attacks, execution of the plans and finally cyber attacks.<sup>235</sup> Terrorists use the internet for collection of funds through direct solicitation, e-commerce, use of charitable organizations and misuse of online payment mechanisms.<sup>236</sup> Accessibility of the internet for terrorism purposes is only possible if data bundles are available, which bundles are acquired using money.<sup>237</sup> Therefore, the internet also falls under the items used by terrorists that require finances.

The content on the media or internet can be spread through digital video discs (DVDs) and Compact discs (CDs) whereby persons from various areas across the world can watch and decide whether to join the terrorist groups or not. Further, an attack is organized through the internet and this can only be possible upon investment of money being made. The use and

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<sup>233</sup> Ibid.

<sup>234</sup> <https://www.vocabulary.com/dictionary/facilitation> accessed 7 May 2019.

<sup>235</sup> United Nations Office on Drugs and Crime in collaboration with the United Nations Counter-Terrorism Implementation Task Force, 'The use of the internet for terrorist purposes' (2012) (accessed on 29 August 2019).

<sup>236</sup> Ibid.

<sup>237</sup> Ibid pp. 21.

misuse of electronic devices is prohibited under the Computer Misuse and Cybercrimes Act.<sup>238</sup>

Other items of expenditure for terrorists include personal expenses of the recruiter, initial facilitation costs for a terrorist group including transportation, accommodation and fake identification costs, employment of civilian experts, hiring costs for mercenaries, production of recruitment materials such as books and magazines, renting premises for meetings and other general costs.<sup>239</sup>

Terrorists also require funds for conducting trainings both regular and for new recruits. A person or group who facilitates or funds training and directing of persons who may wish to join a terror organization commits an offence under the Act.<sup>240</sup> The recruitment and training maybe for purposes of making or using weapons, carrying out a terror attack or exercising and executing the planned terror attacks.<sup>241</sup> The mental element of this offence is to have knowledge that the funds are being directed towards the instruction of members of a terrorist organization in making ammunitions or practicing how to attack during a terrorist ambush. Provision of facilitation for purposes of recruiting new terrorists leads to a conviction of an imprisonment of a maximum of thirty years.<sup>242</sup>

Moreover, beneficiaries of such trainings for purposes of participating in terrorist attacks also commit an offence and upon conviction, are to be imprisoned for a maximum of twenty years. It is important to note that this secondary offence does not require a mental element to be proved.<sup>243</sup>

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<sup>238</sup> (2018).

<sup>239</sup> Ibid.

<sup>240</sup> Prevention of Terrorism Act, 2012, section 14.

<sup>241</sup> Ibid.

<sup>242</sup> Ibid.

<sup>243</sup> Ibid.



Another case study of the twin tower attack shows that planning a terror attack can range between 300,000 US dollars to 500,000 dollars. This costing, factors in salaries, money paid to the members' families and operational costs for sleeper cells.<sup>244</sup>

Upon the conclusion of a terror attack, terrorists can, through the process, engage in robbery and other criminal activities and do away with funds.<sup>245</sup> These funds are referred to as the proceeds of crime and through the United Nations, a Convention<sup>246</sup> was passed to regulate these proceeds. This convention requires a state to pass a legislation establishing the offence of laundering the proceeds of crime and acquisition of the funds known to form part of criminal proceeds. In line with this Convention, Kenya has passed the Proceeds of Crime and Anti-Money Laundering Act.<sup>247</sup>

This law<sup>248</sup> states that acquisition, use or possession of property known by a person or entity to be part of crime proceeds amounts to an offence.<sup>249</sup> Further, failure to report any suspicious transactions on proceeds of crime is an offence.<sup>250</sup> Reporting such a transaction amounts to a defence in law if the reporter is later arrested over the same.<sup>251</sup> Terrorists use and reuse money for their activities.<sup>252</sup> Hence, when they acquire money or proceeds from a crime, the same is used again for the next subsequent terror attack. This Act therefore covers such a move in this section.

The Prevention of Organized Crimes Act<sup>253</sup> was also implemented to enable recovery of proceeds from organized criminal group activities. The crime of terrorism in the opinion of this research suits the definition of an organized crime. Criminal group funds refer to money

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<sup>244</sup> Elema Wario Saru, 'Poaching and the funding of international terrorism: A case study of Kenya' (MA Thesis, University of Nairobi 2016).

<sup>245</sup> KNHCR, 'Are we under siege? The state of security in Kenya' (Occasional Report, 2014).

<sup>246</sup> XVIII-12 United Nations Convention against Transnational Organized Crime. New York, 15 November 2000.

<sup>247</sup> Proceeds of Crime and Anti-money laundering Act (2012), Cap 59B Laws of Kenya.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid, section 4.

<sup>250</sup> Ibid, s.5.

<sup>251</sup> Ibid, s. 6.

<sup>252</sup> Jean-Francois Thony, 'Money Laundering and Terrorism Financing: An overview'.

<sup>253</sup> Act No. 6 of 2010.

used for commissioning of a crime by an organized criminal group together with proceeds from the said criminal acts. An organized criminal group means a set of three or more persons acting with an intention of committing serious crimes. A serious crime is defined as an offence against a provision of any law within Kenya or outside Kenya provided it is considered an offence in Kenya.<sup>254</sup> Terrorism falls within this category in that it befits the definition of a serious crime and is regulated by Kenyan statutes.

Through this Act<sup>255</sup> the Government has many ways through which it can retrieve the funds used by the organized criminal groups for purposes of carrying out the organized crimes. These ways include tracing of property upon getting a court order by the Attorney General. This court order will be used to compel an organized criminal group to surrender the property in question to the Attorney General. It also allows the Attorney General to enter into a bank or financial institution and remove any documents for purpose of executing the said order.

Secondly, the Attorney General, through an *ex parte* application, can get a restraint order from the Court to act as a temporary restraint preventing an organized criminal group from dealing with all moneys and property belonging to them pending the determination of the main case by the Court.<sup>256</sup> This order prevents the accused person from making money to be used for the commissioning of an organized crime or provide information or records for purposes of carrying out investigation by the relevant authorities. Further, upon issuance of this order, the Attorney General is expected to serve it upon the relevant financial institutions or affected persons. This court order remains valid for a period of 30 days.

Thirdly, section 17<sup>257</sup> allows an authorized officer to seize and detain an organized criminal group cash imported or exported from Kenya. Upon seizure, the officer is required, within 7 days, to apply to the High Court for a detention order in regards to that particular cash. This

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<sup>254</sup> Ibid, section 2.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid, Section 16.

<sup>257</sup> Ibid.

order remains valid for 60 days and can be renewed for a further 30 days. Moreover, the cash is to be deposited in an interest bearing account held at a reputable bank and can only be released by the Court upon lapse of 6 months if no proceedings have been filed in regards to the particular cash.

Fourthly, the Act allows a court of law to make a forfeiture order upon convicting a person of an offence under this Act. Such an order may be in regard to forfeiting money or properties found to be under the possession of the convict and were meant for carrying out activities related to an organized crime. It is important to note that all the above applications to the court of law are to be made in a civil manner and not through criminal proceedings.<sup>258</sup> Through these methods, the Government is able to prevent movement of funds through various channels by the terrorists.

This Mutual Legal Assistance Act<sup>259</sup> also allows for asset recovery through an international cooperation between Kenya (as the requesting state) and the identified state (as the requested state). It allows Kenyan authorities to freeze one's accounts upon receiving a freezing order from a court of law or seize the particular funds in that person's or entity's account.<sup>260</sup> This Act aids in the second tier of terrorism financing through asset recovery which prevent the movement of funds and property to the terrorists or their organizations.

The Kenyan laws have gone ahead to create bodies and institutions to deal with proceeds of crime and ensure the laws are followed to the latter. Part 3 of the Act<sup>261</sup> creates the Financial Reporting Centre and section 23<sup>262</sup> mandates this body to assist in identifying proceeds of crime. Therefore, the Centre comes in to ensure that the proceeds from a terrorist attack are curtailed before being disbursed into other activities.

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<sup>258</sup> Ibid, section 19.

<sup>259</sup> Mutual Legal Assistance Act, section 24.

<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on suppression of Terrorism) Regulations)<sup>263</sup> creates a Counter financing of Terrorism Inter-Ministerial Committee tasked with implementing the resolutions passed by the United Nations on suppressing terrorism financing and supervising the implementation of the action plans on countering terrorism financing.<sup>264</sup>

This committee, upon investigation, requests the Cabinet Secretary to order freezing of funds belonging to a person or entity suspected or linked with terrorism activities. This order if effected requires a bank to deny an account holder access to his/her/its funds unless an order lifting the freezing is given.<sup>265</sup> Therefore, these regulations aid in dealing with curtailing the movement of funds by terrorists across financial institutions.

The Inter ministerial Committee has been sending communications to various financial institutions, through the Central Bank of Kenya, to freeze accounts of various persons and institutions listed as specified entities.<sup>266</sup> Through these communications, the banks are ordered to forthwith freeze all accounts of the listed persons and entities and not to provide any financial services to them.<sup>267</sup>

In the Insurance Company for example, the Insurance Regulatory Authority (IRA) is expected to come up with internal policies on combating terrorism financing, ensure compliance with the relevant laws and regulations and finally, organize and conduct continuous training sessions for its staff on their roles and how to deal with cases of terrorism financing.<sup>268</sup>

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<sup>263</sup> (2013) United Nations Security Council Resolution 1373 (2001).

<sup>264</sup> See Regulation 4 and 5, Ibid; See also Hillary Odhiambo Odero, 'Multilateral Cooperation in Counter-Terrorism: Kenya and the UN' (MA Thesis, University of Nairobi 2015).

<sup>265</sup> Ibid, regulation 11.

<sup>266</sup> A specified entity is one that had been declared to have relations with a terrorist organization either as part of it or as a financier.

<sup>267</sup> See Central Bank Circular No. 2 of 2016: Implementation of Communication on specified entities by the Counter Financing of Terrorism Inter-Ministerial Committee on 14<sup>th</sup> March 2016; Regulation 12.

<sup>268</sup> Ibid, Regulation 14.

Further, since terrorism is a global crime and members of terrorist organizations are spread across the world, the revised scheme relating to Mutual Legal Assistance in Criminal Matters within Common Wealth<sup>269</sup> was passed to allow for cooperation between various countries in criminal matters. A requesting country seeks for assistance from a requested state which possesses the information or individuals intended to be charged by the requesting state.<sup>270</sup> In compliance with this scheme, Kenya has passed a mutual legal assistance act. In the Act, the Kenyan State has adopted generally the contents of the paragraphs in the revised scheme.

This scheme creates the Mutual Legal Assistance Act<sup>271</sup>, which allows Kenya to get information on terrorism financing regarding its citizens allegedly involved in terrorism. Further, this Act allows Kenyan government to be able to seek assistance from other states to present persons suspected of having committed acts of terrorism and yet hiding in foreign states. Further it enables provision of mutual legal assistance by other countries and entities to Kenya as regards to investigations and judicial proceedings in criminal matters.

It is a relevant statute to this case study in that terrorism as a crime is not just a national or transnational crime but an international crime which is most often planned outside the country intended to be attacked. An example would be a terror attack planned to be executed in Kenya can be planned by the terror group in Somalia or even the United States of America. This means when suspects are arrested and Kenya intends to conduct thorough investigation into the attack, information from USA and/or Somalia as to the whereabouts or behavior of that particular terror group will be of relevance. This Act allows Kenya to either receive information or if in a capacity to assist another country, also offer information to enable that particular state carry out its investigations.

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<sup>269</sup> Office of the Civil and Criminal Justice Reform (Common wealth)The scheme relating to mutual legal assistance in criminal matters within the Common wealth was originally adopted by Common wealth law ministers at their 1986 meeting in Harare, Zimbabwe and subsequently revised in April 1990, November 2002 and October 2005.

<sup>270</sup> Revised scheme relating to Mutual Legal Assistance in Criminal Matters within the Common Wealth, Par. 1.

<sup>271</sup> Act No. 36 of 2011.

As a procedure<sup>272</sup>, Kenya writes to request for assistance from the identified state and this requirement takes place whether or not the countries involved have a legal assistance agreement. The legal assistance may be required for purposes of among others, identifying and locating persons suspected to be involved in the criminal acts, identifying, freezing and tracing of the proceeds of crime<sup>273</sup> and finally, recovery and disposal of assets acquired as a result of the criminal acts.

### **2.3 Loopholes in the regulatory framework on terrorism financing in Kenya**

The general definition of terrorism finance in the Prevention of Terrorism Act<sup>274</sup> is too general and covers all sources of terrorism. It does not list the sources, hence may be a scapegoat for terrorists and their financiers.

The Non-Governmental Organizations Act together with Public Benefit Organizations Act, firstly, the former allows organizations to choose whether to register under it or other laws and secondly, the new Act imposes less stricter penalties for failing to register an organization.

### **2.4 Enforcement Statistics**

The above discussion on how terrorism is funded clearly portrays an image that terrorists need funds to successfully carry out a terror attack. Further, a thorough regulation of terrorism financing, is required to combat terrorism financing. It has been shown that Kenya, has tried to ensure all the general sources of terrorism financing are regulated. Whether or not the laws are implemented fully is subject to consideration based on the ever increasing cases of terrorism attacks, an indication that terrorism financing still takes place.

Miriam<sup>275</sup> explains that after the Garissa Massacre which took place in 2015, 85 persons and companies ' accounts have been frozen on allegation of financing terrorism or receiving

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<sup>272</sup> Ibid, section 3.

<sup>273</sup> Ibid, section 23.

<sup>274</sup> Section 3(a).

proceeds from terrorism. She further explains that the freezing process requires banks to report any suspicious activity for monitoring purposes. Other ways through which banks identify suspicious accounts include use of large cash transaction forms to monitor large cash transactions or withdrawals passing through electronic means.

Secondly, banks are meant to monitor any transaction that is not norm and alert the Anti Money Laundering officials without tipping off the customer and finally, the AML officials are tasked with investigating and in collaboration with BFIU (Banking Fraud Investigations Unit).

## **2.5 Analysis based on the information gathered from the field study**

In Chapter One, this study set out the problem statement and the questions that the research was to answer. A questionnaire was used to collect information from 32 respondents. On the questions on the adequacy or otherwise of the laws on terrorism financing, one of the questions sought to analyze whether the existing laws are adequate to control the financing of terrorism.

One of the respondents agreed that the available laws on terrorism financing have been effective in curbing financing of this terror organization, however, he stated that there is still need for strict enforcement and prosecution. In as much as the laws are adequate, the problem lies in the implementation, lack of goodwill from all relevant stakeholders and the threshold of proof beyond reasonable doubt in bringing the culprits to book.

Another respondent affirmed that they are adequate since the international treaties provide a wide array of principles which can be tailored into a country's needs. Further, that Kenya in loyalty to these principles regularly updates its local laws to accommodate new nuances affecting terrorism financing through amendments to the laws.

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<sup>275</sup> Miriam, interviewed on 31 May 2019 in Nairobi.

Moreover, the Central Bank of Kenya has been hands-on in constantly monitoring the amounts remitted to the banks and tracing them, hence leading to a reduction in the suspicious transactions on terrorism financing.

Further, the proponents argued that they are adequate since they encompass a legal framework on how to engage mutual legal assistance agreements between countries in cases of extradition of offenders. Moreover, the laws have been formulated in light of the Constitution of Kenya<sup>276</sup> on rights of the victim as well as the offender, procedure on assets or recovery of monies from money laundering.

In disagreeing with this assertion the opponents argued that the laws in place have not been effective in curbing financing of Al shabaab considering the attacks that have been reported from time to time and for which the organization has claimed responsibility. These laws have merely reduced the opportunities without completely curbing the problem.

The challenge with the existing laws is based on the fact that they largely focus on the formal banking sector hence a huge regulation gap exists for the informal financial sector. The funders often hide in form of aid, money laundering and other support avenues but not directly as terrorism funding, hence it has been technical for the available laws to curb it.

This research agrees with the assertion that informal sectors are readily available sources of finances for both middle and low-income earners. A huge percentage of the population seeks for financial assistance to business owners since they are readily willing to issue soft loans. Nevertheless, they are always unregulated since they include professional money lenders, traders, small holder farmers and many more.<sup>277</sup>

These laws have been successful in curbing terrorism financing only to the extent of providing a framework for executing such cases but enforcing it has been frustrated by the

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<sup>276</sup> (2010)

<sup>277</sup> Shuaib Ndagi Sayedi, 'Informal financial institutions: A source of soft loans to individuals and small business owners' (2016).

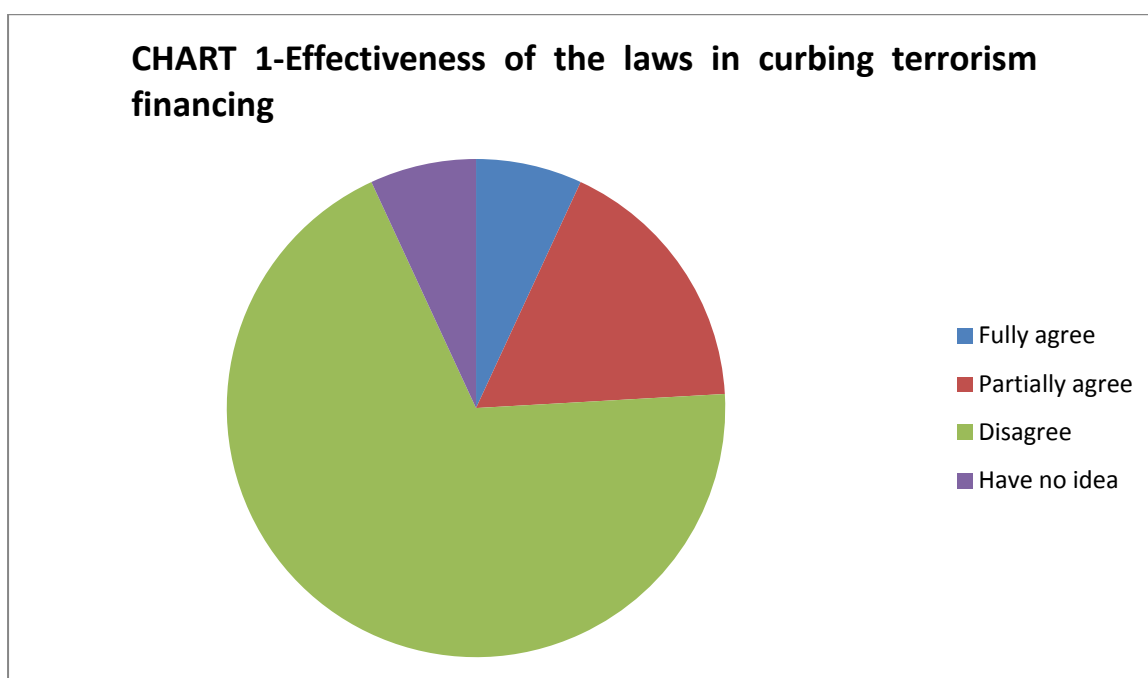


key stakeholders. Further, the respondents argued that the laws are not sufficient since the country has continued to experience well organized resource intensive terror attacks since 1998.

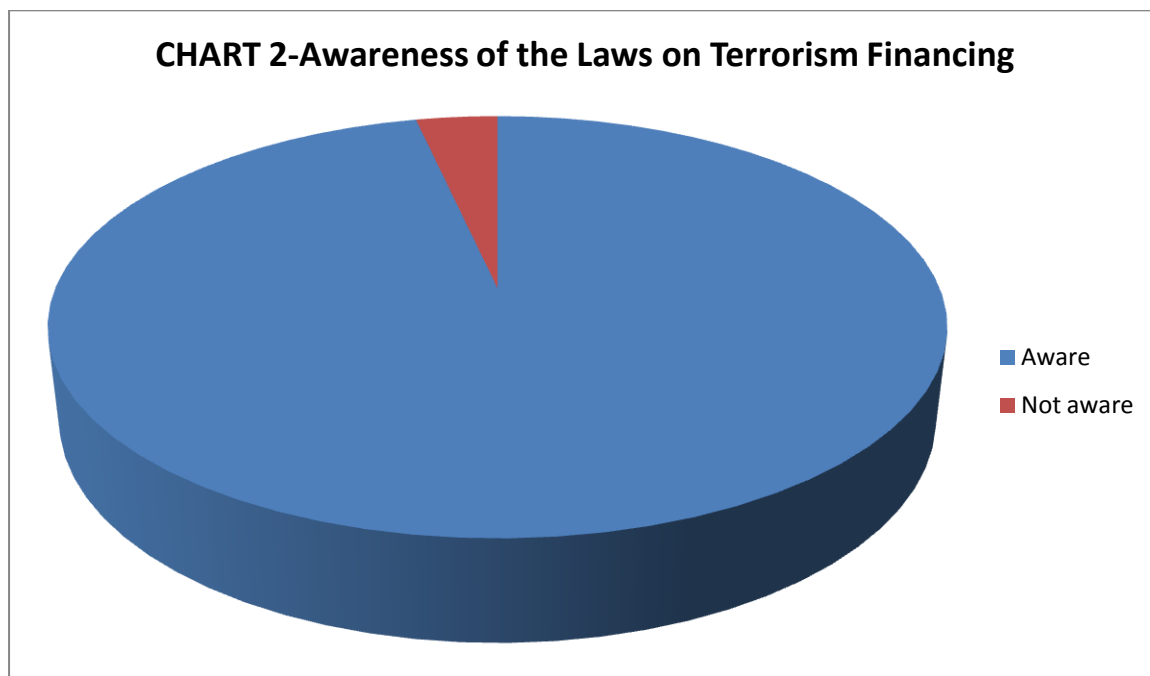
In explaining how Saccos deal with suspicious transactions, a respondent stated that they have in place banking policies and once an account has been categorized as suspicious, a report is made to the regulator and then the Bank Antifraud comes in. However, she indicated that such transactions still go either unnoticed or the officials of the banking facility cooperate with the criminals to cover up their tracks.

## 2.6 Statistics based on the field research conducted (Respondents)

On the question of the effectiveness of the laws on curbing terrorism financing, 32 respondents were interviewed. Out of the 32 respondents, two agreed fully that the laws have been effective in curbing terrorism financing. Five respondents partially agreed, 23 Respondents disagreed whereas 2 of them had no idea on whether the laws were effective or not. This analysis is shown in the pie chart below.



On the awareness of the existing laws on terrorism financing, majority (31 out of 32) of the respondents indicated having an idea of at least one of the laws whereas only one person had no knowledge about the laws.



Out of the 32 Respondents, 29 agreed that there is need to create awareness on the existence and contents of the terror financing laws. One respondent disagreed and another one had no idea whether awareness should be done.

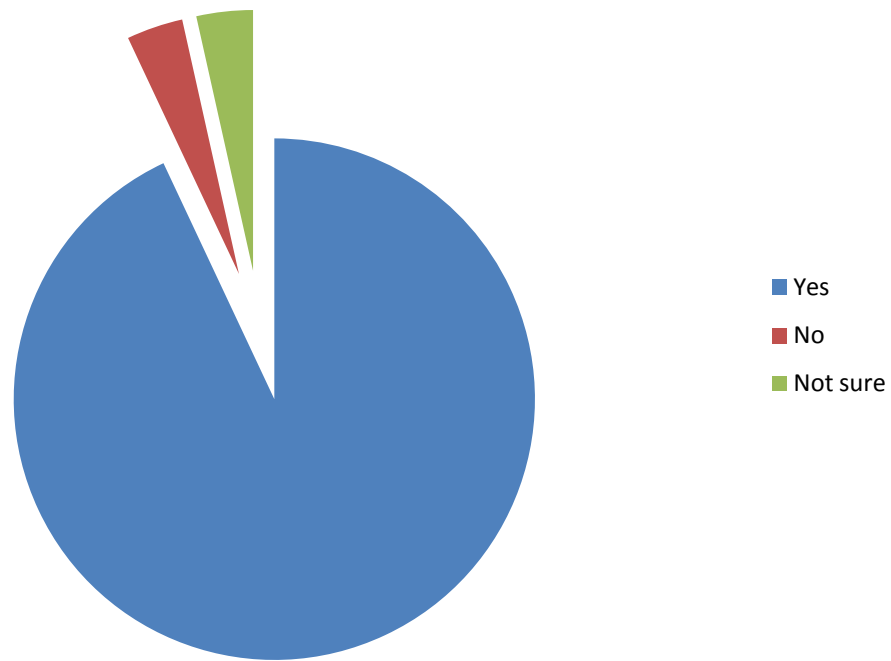
Under the Guidelines passed by the Insurance Regulatory Authority,<sup>278</sup> insurance companies are mandated to ensure they inform their employees on the relevant laws and the legal mandate inscribed therein.<sup>279</sup>

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<sup>278</sup>Guidelines to the Insurance Industry on Implementation of the Proceeds of Crime and Anti-Money Laundering Act and the Prevention of Terrorism Act, 2016.

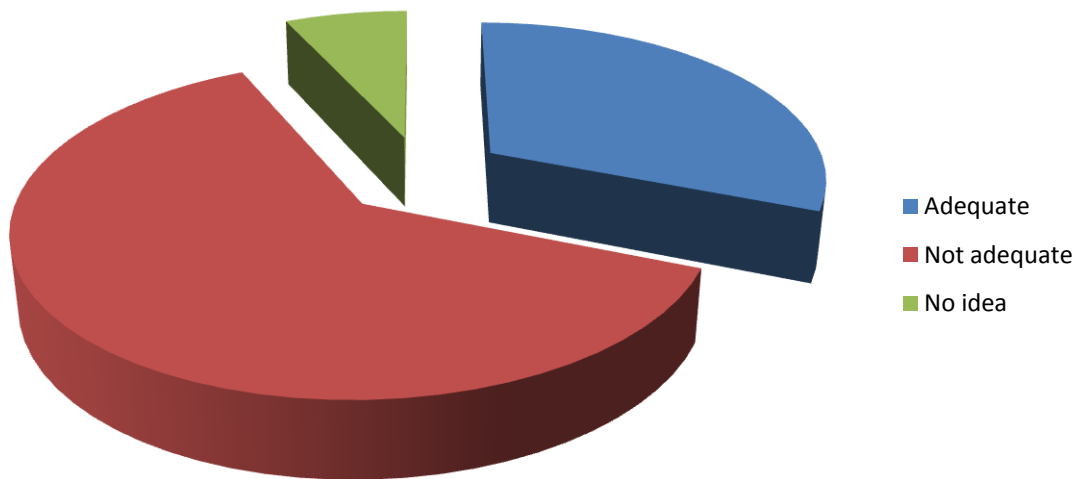
<sup>279</sup> Ibid.

**CHART 3-Whether there is need to create awareness on the laws on Terrorism Financing**



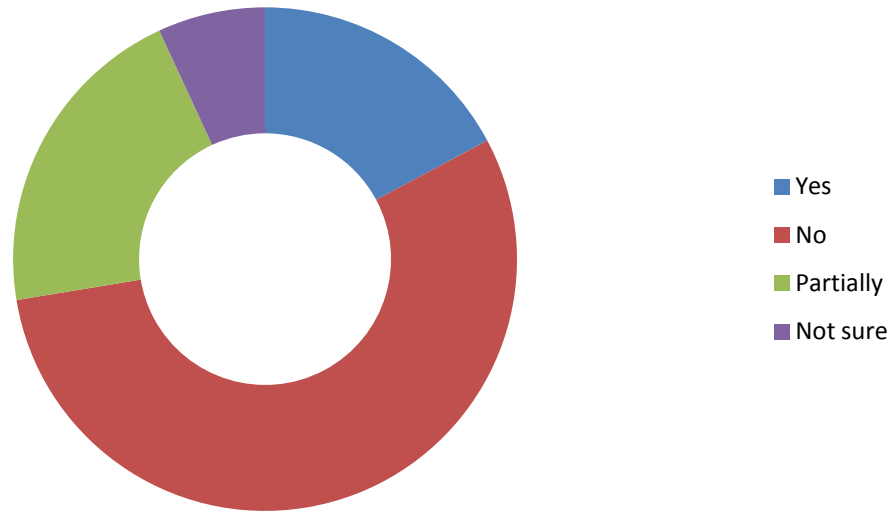
Of the 32 respondents, 9 agreed that the laws were adequate, 21 disagreed whereas 2 had no idea.

**CHART 4-Whether the laws regulating terrorism financing are adequate**



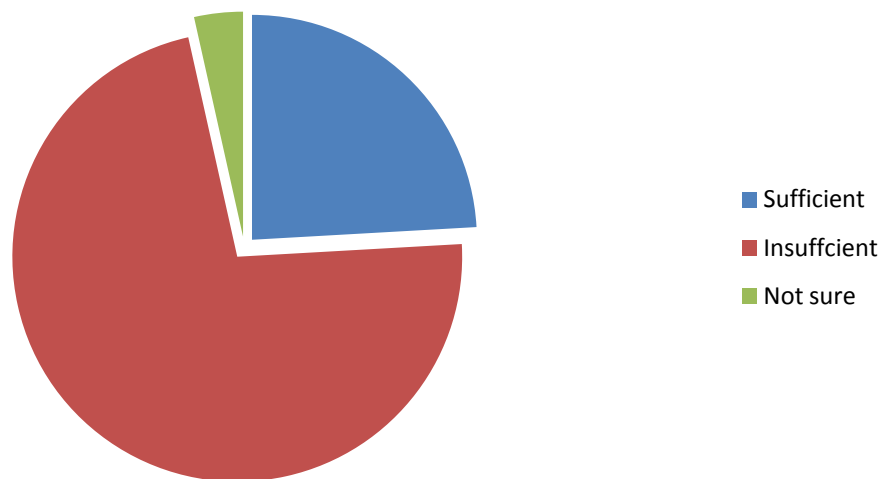
Of the 32 Respondents, 5 agreed that the available laws were effective in dealing with financing of Al shabaab, 6 stated that they were partially effective, 19 noted that they were ineffective whereas 2 respondents were not sure.

**CHART 5-Whether the available laws are effective in curbing terrorism financing of Al shabaab**



Out of the 32 Respondents, seven agreed that the laws are sufficient, 23 indicated that they are insufficient whereas one was not sure.

**CHART 6-Whether the available laws are sufficient**



## 2.7 Conclusion

From the field study conducted, it is evident that majority of the respondents (representing the people of Kenya) are aware of terrorism financing and its regulatory framework. Majority

were aware of the ways through which terrorists finance their activities. However, majority agreed that the challenge of implementation was the greatest in inability of the state to curb terrorism financing.

The major research question sought to find out whether the available laws on terrorism financing are adequate not. From the field study and the analysis of the legislations in chapter two of this study, it is evident that the laws are partly adequate and more needs to be done. It is evident that even with the laws in place, implementation has been a problem, hence creating an avenue for terrorism financing to thrive.

In chapter three, through the discussion on Al shabaab and its financing life, it is evident that this terror organization will do anything to ensure it gets resources and that once a source is closed, it looks for an alternative source of funds. Further, that the associates living in the diaspora are a great source of funds for the organization. Through the field study, it was realized that the mutating nature of terrorism and the globalization of the systems across the world make these terrorists to always be ahead of the governments. Hence, there is need to have a strong and effective organ within a state's government, always on the look and researching to ensure this terror organization is controlled financially.

Evidently, Kenya has vast laws and regulations to combat terrorism financing. The drafters of the laws, generally, understood financing of terrorism, what it involves, its sources and how possible they can curb it. Terrorism financing has been given a wide definition and even includes suspicious financial transactions.

The regulations that have been passed by various institutions prescribe the procedures that are to be followed by them in identifying and dealing with cases suspected to be linked to terrorism financing. According to the laid down procedures, upon the institutions following them, if it is confirmed that the suspected entities or individuals are truly participating or involved in acts of terrorism, there is further a detailed description on how to curb those acts.

These actions may include freezing of accounts, arrest of suspected criminals and further prosecuting them on the offences laid down in the statutes.

The analysis of the relevant legislations and instruments on terrorism financing together with the information gathered from the field study in the opinion of this study shows that there exist adequate laws and regulations to curb terrorism financing. The question that arises therefore is whether these available legislations, regulations and international instruments have had a positive impact on reducing cases of terrorism financing in Kenya thus leading to a decrease in terrorism attacks. This analysis will be discussed in chapter three.

Further, the question set to be answered is why in as much as there exist adequate legislations on terrorism financing, cases of terrorism financing which eventually lead to terror activities are still on the rise in Kenya. Chapter Three comes in to discuss a case study of Al shabaab and its financing life. As it discusses this terrorist organization, the research in link with the findings of this chapter and the provisions of the law, seeks to find out whether the laws of Kenya on Terrorism Financing have taken into context the financing life of Al shabaab in order to be able to curb it.

## CHAPTER THREE

### ALSHABAAB TERRORIST ORGANIZATION: THE FINANCING ASPECT

*“... ‘Africa is rich but Africans are poor’ does not apply to the Continent’s terrorists.”<sup>280</sup>*

#### 3.0 Introduction

There exist various legislations prohibiting terrorism financing across the world. The United Nations, through its various regulations and standards to be met by its member states has set out various prohibitions including a requirement for freezing assets discovered to be linked to terrorism. States such as the United States of America has condemned financial support to various terrorist organizations across the globe including the ones attacking Kenya. However, terrorists continue to make money, their financial sources remain intact and terror attacks are still on the rise.<sup>281</sup>

In the previous chapter, the general framework on terrorism financing including various sources of funds used by terrorists and the items used by terrorists requiring funding are discussed. Further, the researcher delved into a deeper analysis of the legal framework on terrorism financing in Kenya, considered the international instruments together with the local legislations, most of which have been passed by Kenya in recognition of its obligation under the international instruments.

In the analysis of the laws and regulations, it was generally identified that the Kenyan Government through its various financial departments has come up with strict regulations on how to curb terrorism financing, through identification of the legal or illegally acquired funds, seizing of the identified funds and finally, confiscating and freezing the said funds.

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<sup>280</sup> Benjamin P. Nickles and Mr. Samuel E. Cleaves, ‘What money means for terrorism in Africa’ (December 2018) Africa Policy Brief.

<sup>281</sup> Ibid

However, it was concluded that amidst the fact that there exist proper legislations on terrorism financing in Kenya, terrorism cases are still on the rise hence, begging the question on whether the challenge is with implementation or the laws are inadequate to curb terrorism financing.

This Chapter discusses a case study of Al-shabaab terror organization, which has been linked to nearly all terrorism attacks that have occurred in Kenya. It is the intention of this study that through a detailed discussion and analysis of this terrorist organization, it can be concluded on whether Kenya needs to pass more laws on terrorism financing, revise its existing laws or, focus on implementing the already existing laws in a bid to curb terrorism financing of Al-shabaab and other terror organizations which may pose a threat to the Republic of Kenya.

To achieve this aim, this chapter discusses the Al-shabaab group, in a broader way analyze its sources of funds with a consideration on the regulatory framework in Kenya. It seeks to find out whether the sources of funding so identified by the Kenyan Government are actually the exhaustible sources of funding for the terror organization. Further, it arrives at a conclusion on whether the modes or strategies put in place by the Kenyan Government are effective in curbing the identified sources of financing for the terror organization.

The justification for carrying out such a case study on the financing of Al-shabaab lies on the fact that finance is the lifeblood of terrorism and at the heart of every terrorist attack lies inflow and outflow of money. Al-shabaab being a terror organization is not exempted from such a requirement and money is at the centre of its operations.<sup>282</sup>

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<sup>282</sup> Tom Keatinge, 'The role of finance in defeating Al-shabaab' (2014) *The royal United Services Institute for defence and security studies*.



Another justification for focusing on the Al-shabaab is because it has been implicated of engaging in terror attacks in Kenya, as shown in table b in Appendix iii. Hence, it is documented that Al-shabaab attacks in Kenya became rampant from 2008. Between 2008 and 2015, Al-shabaab executed 272 attacks in Kenya alone.<sup>283</sup>

### **3.1 Sources of its Finances**

The above listed items indicate a huge demand on the side of this terror organization for money. Al-shabaab terrorist organization draws its funds from various sources both legitimate and illegal. It is funded either internally by its members or externally by sponsors and charitable organizations, which have share similar desire as the terrorist organization to revenge upon a particular state.<sup>284</sup> Mercy explains that sponsors assist this terror organization in many ways including supplying them with weapons, hiding wanted terrorists and giving them basic amenities. Al-shabaab lacks ability to source for funds from the most lavished activities such as oil and gas, gold or even diamond mining.<sup>285</sup>

However, this terrorist organization has a well established and organized financial system managed and run by Maktabatu Maaliya, commonly referred to as the '*ministry of finance*'. Alongside this ministry, exists an intelligence service which advises the ministry and is tasked with advancing key financial strategies and how to implement them.<sup>286</sup>

Al-shabaab gets its funds from the following sources both domestic and outside its host country:

#### **3.1.1 Charitable Organizations<sup>287</sup>**

Some of these organizations fund terrorists heavily since they are mostly unregulated and are formed by persons associated with the terror organizations.<sup>288</sup> These organizations majorly

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<sup>283</sup> Anyango Otieno, 'History of Al shabaab and its link with Kenya' *Standard Newspaper* (16 Jan 2019).

<sup>284</sup> Rob Wise, 'Al shabaab' (July 2011) Case study Number 2 Center for Strategic and International Studies.

<sup>285</sup> Tom Keatinge, The role of finance in defeating Al-shabaab (2014) *The royal United Services Institute for defence and security studies*.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

fund Al-shabaab based on the assumption that the members of the terrorist organization ought to be sympathized with and are vulnerable.<sup>289</sup> A classic example has been the Pumwani Riyadhha Mosque Committee (PRMC) based in Nairobi, which since 2011 has been suspected of funding this terror organization. This committee was listed by the United Nations through its Somali Monitoring Group and the suspected committee was led by Kenyan politicians.<sup>290</sup>

The Somalis living in the diaspora remit about 500-800 million dollars to their families and relatives back in Somalia. However, most of this money, even though it gets into Somalia legally, it ends up in the pockets of the extremists. For Kenya, the terrorists mostly benefit from the Somalis living in Dadaab refugee and Nairobi area.<sup>291</sup>

Kenya does not have strict regulatory framework for charitable organizations. There exist a Non-Governmental Organizations Coordination Act passed in 1990 together with its regulations implemented in 1992. However, statistics show that amidst the fact that this Act requires certain charitable organizations to be registered, most of the existing organizations have registered under other statutes and not the NGO Act. Furthermore, this Act excludes certain charitable organization, hence can be suspected of them being used by terrorists to seek for funds without being regulated or answerable to any board.<sup>292</sup>

It is also important to note that there has been in existence a Public Benefit Organizations Act<sup>293</sup> that has never taken force as a law. This Act was enacted to establish administrative bodies to oversee public benefit organizations. Further, it aims at regulating these organizations and overseeing their affairs. Charitable organizations not registered under any other Act are required to register under this Act. Overtime, as has been shown in this

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<sup>288</sup> Shima Baradaran et al, 'Funding terror' (February 2014) 162(3) *University of Pennsylvania Law Review* 477-536.

<sup>289</sup> Ibid.

<sup>290</sup> Cyrus Ombati, 'Pumwani Mosque leaders under probe' *Standard Newspaper* (Nairobi, 20 August 2011).

<sup>291</sup> LTCA Geoffrey Kambere, 'Financing Al shabaab: The vital port of Kismayo' (2019) 9(1) *CTX*.

<sup>292</sup> William Ikutha, 'Fast changing NGO landscape in Kenya' (2017) DLA Piper Africa.

<sup>293</sup> No. 18 of 2013.

examination, charitable organizations have been used to fund terror activities either by terrorists opening new organizations or legitimate organizations funding terror activities.<sup>294</sup>

Nevertheless, the penalty for failing to register as a charitable organization under the Act attracts a fine of only 50,000/0 or imprisonment for 2 years, or both. This clearly shows the less strict sense of this law hence, in the opinion of this research, this is the reason why charitable organizations have been on the limelight in funding Al-shabaab and other terror organizations without any legal action.<sup>295</sup>

### **3.1.2 Bribes, ransoms and payment of taxes<sup>296</sup>**

Al-shabaab uses force to coerce people especially residents within their hide outs to support them financially through bribes, payment of ransoms upon their loved ones being kidnapped and payment of taxes. Taxes include *zakat*, an amount collected by elders of the Somali Council at Bakara market in Somalia and allegedly remitted to the group.

Moreover, prestigious hotels in Somalia also unwillingly remit taxes to this terror organization in fear of the outcome and to protect their businesses.<sup>297</sup> Al-shabaab acts as a shadow government in that it has Islamic courts preferred by the local people over normal courts. In these courts, they spread their propaganda hence recruiting more members. As regards taxation, it collects taxes from agricultural produce, registration and taxation of vehicles passing through their designated points, goods being transported through their controlled areas and sale of livestock.<sup>298</sup>

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<sup>294</sup> Ibid.

<sup>295</sup> Supra fn 68.

<sup>296</sup> United Nations Assistance Mission in Somalia, Countering Al shabaab propaganda and recruitment mechanisms in South Central Somalia (2017).

<sup>297</sup> United Nations Security Council, 'Letter dated 7 November 2018 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council' (2018).

<sup>298</sup> Ibid.

Mike<sup>299</sup>, a respondent explains that taxation and rent imposed upon the general populace and business activities in Somalia due to the persisting state of lawlessness within Somalia is a major source of income for these terrorists. Some of the reported cases on kidnapping by Al shabaab terror organization are indicated in an annexed schedule.<sup>300</sup>

In Kenya, bribery in terrorism cases manifests itself through corruption.<sup>301</sup> Through the police officers manning Kenya's security borders, terrorists are able to bribe them and get their ways into the country.<sup>302</sup> Bribes in Kenya are regulated by the Bribery Act<sup>303</sup> which prohibits receiving and giving of bribes by or to any person or organization in the country. However, it is a general legislation and does not provide any indication on linkage with terrorism. Nevertheless, provided it can be proved that a person or organization received a bribe, regardless of the intention of the giver, that amounts to an offence. Therefore, if a police officer for example receives a bribe to allow a terrorist to enter the country, then that amounts to an offence punishable under the law.

The offence of kidnapping or abduction is covered under section 254 to 266A of the Penal Code.<sup>304</sup> It prohibits conveying a person from Kenya without his/her permission to another location and the punishment for this offence is 7 years imprisonment.<sup>305</sup> In terms of collection of taxes, Kenya does not have laws or regulations preventing the same hence, can be loophole for these terrorists.

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<sup>299</sup> Mike, interviewed on 6 June 2019 in Nairobi.

<sup>300</sup> Ibid.

<sup>301</sup> Ellen Gutteman, 'Poverty, Corruption, Trade or Terrorism: Strategic framing in the politics of UK anti-bribery compliance' (2016) *The British Journal of Politics and International Relations*.

<sup>302</sup> Dick M. Ombaka, 'Explaining Kenya's insecurity: The weak state, corruption, banditry and terrorism' (2015) 3(3) *International Journal of Liberal Arts and Social Science* 11-26.

<sup>303</sup> Act No. 47 of 2016.

<sup>304</sup> Penal Code, Cap. 63 Laws of Kenya.

<sup>305</sup> Ibid.

### 3.1.3 Social Media

Through Al-shabaab widespread of propaganda and fake news all over the media, this terror organization has managed to get a control over a larger population on the web. This enables them to spread their ideologies and in return source for funding or financial support.<sup>306</sup> The existence of twitter and facebook has created a large forum for exploitation by Al shabaab especially in gaining control and recruiting more members through spread of propaganda.<sup>307</sup> It is reported by the United Nations Monitoring Group that in 2009 alone, this terror organization managed to raise over 40,000 US Dollars through an online fundraising. The money came mostly from the Somali diapora population.<sup>308</sup>

Kenya has passed a Computer and Cybercrimes Act.<sup>309</sup> This act prohibits acts such as accessing computers with an intention to commit an offence, impersonation, e.t.c. Section 33<sup>310</sup> creates an offence of cyber terrorism and penalizes any person who causes to be accessed or accesses a computer with intention of using it for planning and carrying out acts of terrorism.

Upon conviction, this offence attracts a fine of 5 Million shillings or an imprisonment for not more than 10 years or both. No case (conviction or acquittal) has been reported as having been prosecuted under this Act.<sup>311</sup> Nevertheless, it remains an Act of Parliament, which might help in reducing the cases relating to terrorism financing. Moreover, as explained in Chapter two, collaboration between private and public sectors can help in reducing the vulnerabilities that come with social media and terrorist financing.<sup>312</sup>

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<sup>306</sup> Tom Keatinge, 'The role of finance in defeating Al-shabaab' (2014) *The royal United Services Institute for defence and security studies*.

<sup>307</sup> Tom Keatinge and Florence Keen, 'Social Media and (Counter) Terrorist Finance: A fund-raising and disruption tool' (2018) 42(1-2) *Journal of Studies in Conflict and Terrorism*.

<sup>308</sup> D.E. Agbibo, 'Ties that bind: The evolution and links of Al shabaab' (2014) *The round table: The commonwealth journal of International Affairs* 597.

<sup>309</sup> Act No. 5 of 2018.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

<sup>312</sup> Tom Keatinge and Florence Keen, 'Social Media and Terrorist Financing: What are the vulnerabilities and how could public and private sectors collaborate better?' (2019) 10.

### 3.1.4 The Somali diaspora community

About 14% of the Somali Population stays outside the Somali land.<sup>313</sup> These members of the Somali Population are reported to be financing the Al-shabaab terrorist organization by sending donations and financial support. According to the United Nations Food Security and Nutrition Analysis Unit, every year the Somalis living in diaspora contribute up to about 1.2 Billion US Dollars to the Al-shabaab organization.<sup>314</sup>

Since 2008, the Al-shabaab community has relied extensively on foreign donations from their brothers and sisters in the diaspora. This includes Africa, Middle East and Western countries such as the United States of America.<sup>315</sup> In 2016, 2 accused persons, Hinda Osman Dhirane and Muna Osman Jama, were convicted in the United States for providing financial support to Al shabaab. They were found guilty of remitting a total of 5,000 US Dollars sent in small denominations of 50 and 100 dollars. Moreover, these convicts had organized meetings for women from Kenya, Somalia, Egypt, Netherlands, Sweden, UK, Canada and Minneapolis to help in raising funds towards supporting Al shabaab terror organization.<sup>316</sup>

Furthermore, in 2010, 14 Americans were indicted in the United States for supporting Al shabaab financially and even organizing fundraisings to collect funds.<sup>317</sup> The diaspora community supporting this terror organization is mostly refugees who ran away from Somalia. In Kenya, Eastleigh is an area within Nairobi region known for hosting Somalis displaced from their home area. Through Eastleigh, remittances are done for the displaced residents, the refugees staying in the refugee camps especially Dadaab and family members of the refugees still based in Somalia.

Due to majority of these persons being poor, Al shabaab takes advantage of such conditions and provides material, financial support alongside business opportunities hence recruiting

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<sup>313</sup> UNDP, 'Somalia's missing million: The Somali diaspora and its role in development' (March 2009).

<sup>314</sup> Supra fn 227 pp.597.

<sup>315</sup> Ibid.

<sup>316</sup> Home Treasury, 'The National Terrorist Financing Risk Assessment' (2018).

<sup>317</sup> Ibid.

more followers. The business opportunities are mostly done through creation of stalls, malls and markets.<sup>318</sup>The terrorists also take advantage of such areas to hold meetings where they share their doctrines. Further, they provide financial support to institutions that promote the doctrines of this terror organization. This support even extends to issuance of uniforms and other school amenities for the children. This vulnerability in most instances drive the victims to join Al shabaab believing that it is a very supportive and proper organization.<sup>319</sup>

According to the Government at Mogadishu, Al-shabaab collected about 2 Billion dollars from the diaspora community as at 2013-2014 compared to the entire country's gross domestic product which was estimated to 6 Billion dollars.<sup>320</sup>It is noteworthy that the United States, upon realization of the fact that the Somalis in the diapora fund the Al-shabaab organization back in Somalia, it illegalized foreign funding of a terrorist organization.<sup>321</sup>

In the opinion of this study, it is opined that even if foreigners may still attempt or try to send remittances to a terrorist organization, illegalizing such act acts as a way of curbing such attempts and also reduces the rate at which it is committed. Nevertheless, instead of using formal means of remitting the funds, the funders may just turn to using informal value transfer systems such as hawala<sup>322</sup> hence, the governments need to take into consideration such possibilities in coming up with prohibitions against terrorism financing.

Due to the strict regulations, the terrorists have resorted to using the internet to collect money from their members or well wishers belonging to the Somali Diaspora community. It is reported that just in August 2009, the group was able to raise 40,000 dollars from the diaspora members through internet sourcing for funds.<sup>323</sup>

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<sup>318</sup> Mitchell Sipus, 'Support for al-shabaab through the diaspora' (2010) Armed Non-state Actors pp. 29.

<sup>319</sup> Ibid.

<sup>320</sup> James Fergusson, 'The world's most dangerous place: Inside the outlaw state of Somalia' (Transworld publishers 2013,2014) pp.247.

<sup>321</sup> Supra, fn 18.

<sup>322</sup> < <https://www.cfr.org/backgrounder/tracking-down-terrorist-financing>> accessed 19 July 2019

<sup>323</sup> Rob Wise, Al shabaab (2011) Case study No. 2 AQAM Futures project: Case study series.

Eastleigh area within Nairobi region hosts a majority of the Somali community (refugees). It is stated or so alleged by the Kenyan Authorities that this is one of the prone areas which hosts terrorists and is used by them as a venue for spreading their propaganda to recruit more persons. In an attempt to curb terrorism within this area, the Government of Kenya has introduced various counter terrorism strategies including increase in the numbers of the police squads, introduction of an intelligence service which is not so effective within the region, community policing and conducting random searches. As at 2017, studies conducted indicated that the counter terrorism strategies had been effective 50% and more still needed to be done.<sup>324</sup>

In an attempt to control the Somalis living in Kenya, the government of Kenya has introduced various counter terrorism strategies including the nyumba kumi initiative, security border controls, intelligence services being firmed up and community policing.<sup>325</sup>

### **3.1.5 Sale and Export of Charcoal**

The members of Al shabaab terror organization have taken advantage of Kismayo area to use it for purposes of burning charcoal to export it outside Somalia and raise revenue for their activities. In as much as the United Nations have tried to advise the Somali Government to take necessary measures to prevent such exploitation leading to the exportation of charcoal, this activity still continues and as at 2012, Al shabaab earned a sum of 25 million dollars from coal business.<sup>326</sup>

What happens is that Al shabaab controls the check points in Kismayo area hence whenever vehicles with charcoals pass by those designated points, they have to pay tax to this group. In 2013, at Buula Xaaji checkpoint, one of the various checkpoints within the Kismayo area, every vehicle was taxed at about 250 dollars for smaller trucks whereas the large trucks paid

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<sup>324</sup> Samini Magogo, 'The effectiveness of counter terrorism strategies in Kenya: Case study of Eastleigh location, Nairobi County' (MA, University of Nairobi 2017).

<sup>325</sup> Ibid.

<sup>326</sup> Ibid.



500 dollars per vehicle. This checkpoint earned these terrorists a sum of 650,000 dollars per month. As at 2014, the United Nations Monitoring Group reported that more than 6.75 Million charcoal bags were exported from Kismayo area to various destinations.<sup>327</sup>

According to the United Nations Report, this illegal sale of charcoal has been one of the greatest sources of income to Al shabaab organization. The United Nations through its Sanctions Committee has declared export of charcoal from the Somali region illegal and Kenya, in recognition of such, has gone ahead and assisted the Somalia Government in reclaiming the Kismayo area through AMISOM though it has not been fully successful.<sup>328</sup>

The AMISON has managed to reduce the number of the members of this terrorist organization. However, in as much as the population of Al shabaab may seem to have reduced, its income is nevertheless secure and still has about 5,000 soldiers on the field hence more united.<sup>329</sup> As at 2018, the United Nations Monitoring Group reported that Al shabaab continues to extort money from charcoal with the rate of taxation on 4 million bags per year at a price of 2.50 dollars per bag hence a total of 10 million dollars. For the exports to be successful, this terror organization fakes certificates of origin which have proven to work for them during shipment into foreign countries.<sup>330</sup>

Kenya has various regulations on charcoal burning including the Forests Act<sup>331</sup>, The Forests (Charcoal) Regulations<sup>332</sup> which provide for a licensing committee that issues license to charcoal burners across the country. Therefore these regulations<sup>333</sup> ensure that trees are not

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<sup>327</sup>David M. Anderson and Jacob McKnight, 'Kenya at war: Al-shabaab and its enemies in Eastern Africa' (2014) *African Affairs*.

<sup>328</sup> Journalists for justice, *Black and White: Kenya's criminal racket in Somalia* (2015).

<sup>329</sup> David M. Anderson and Jacob McKnight, 'Kenya at war: Al-shabaab and its enemies in Eastern Africa' (2014) *African Affairs*.

<sup>330</sup> United Nations Security Council, 'Letter dated 7 November 2018 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council' (2018).

<sup>331</sup> (2005).

<sup>332</sup> (2009).

<sup>333</sup> Practical Action Consulting East Africa, 'The Kenya Charcoal Regulations Pocketbook' (2012).

brought down and burnt illegally.<sup>334</sup> Thus, if these terrorists were engaging in this activity in Kenya, there would be a law to regulate it.

### 3.1.6 Piracy

The members of Al-shabaab terror organization target pirates who operate in their controlled regions. They (since it has not been discovered otherwise) do not involve themselves directly in piracy, however, if they identify pirates within their controlled regions, then the pirates have to pay a 'user fee' to the organization.

It is argued that Somali pirates are referred to as 'maritime terrorists' and have a link with Al-shabaab organization.<sup>335</sup> However, other scholars assert that piracy and terrorism in Somalia are distinct and have no connection whatsoever.<sup>336</sup> Whichever assertion is true, this research argues that there is no loophole that Al-shabaab terrorists cannot use to ensure they get resources or assistance in carrying out their attacks. Therefore, piracy remains a potential threat or opportunity for these terrorists to satisfy their desires.

Relationship between pirates and Al-shabaab terrorists could be of great assistance to the terror organization because of financial advantage. Since direct money transfers is highly guarded by countries, the Al-shabaab terrorists in link with the pirates may enter into an agreement to kidnap or raid a ship and share the proceeds from the piracy. However, since sharia law prohibits abduction, it would be interesting to learn that piracy could lead to maritime terrorism along Somalia borders.<sup>337</sup>

Bio-piracy is defined as an act of exploring biological resources without prior authorization or informing the owner or compensating the owners.<sup>338</sup> The Kenyan Government in

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<sup>334</sup> RM Muthui, 'Assessing Compliance with Charcoal Laws' (MA Thesis, University of Nairobi 2012).

<sup>335</sup> Currun Singh and Arjun Singh Bedi, 'War on piracy: The conflation of Somali piracy with terrorism in discourse, tactic and law' (2016) *SAGE Journal*.

<sup>336</sup> Karine Hamilton, 'The piracy and terrorism nexus: Real or imagined?' (2010) Australian Counter terrorism conference.

<sup>337</sup> The world bank, *The pirates of Somalia: Ending the threat, rebuilding a Nation; Piracy, Insurgency and terrorism*' (2009).

<sup>338</sup> Wildlife Conservation and Management Act, Act No. 47 of 2013.

attempting to fight piracy deploys Kenyan Navy forces to the waters to escort its merchant ships especially those passing through the borders of Somalia.<sup>339</sup> Despite its attempts to fight piracy at the ocean, Kenya still needs to have a local legislation in place specifically dealing with the issue of piracy. This is in addition to the international instruments such as UNCLOS III to which applies to Kenya.

### **3.1.7 Other Terrorist Groups**

Terrorists' organizations and radicalized persons support Al-shabaab financially with a view of spreading extremism across the world.<sup>340</sup> In the United States, it has been realized that in support of other terror organizations, these groups of people purchase ammunitions, military gear and equipment, firearms and other materials used in making explosives, and then send them to the terrorist organizations.<sup>341</sup>

A case example of a radicalized person who was convicted of supporting a terror attack was Christopher Lee Cornell, who plotted, planned and attempted to carry out a terror attack on the United States' government officials. He has used money from his own personal savings to purchase 600 rounds of ammunition worth 1,900 dollars and 2 semi-automatic rifles to carry out the attack.<sup>342</sup>

Being an affiliate to Al-Qaeda terror organization, Al-shabaab has managed to strengthen itself as the two organizations train leaders and soldiers together. This relationship was cemented when the United States killed Ayro, thereafter, Al-shabaab gave out a statement in praise of Al Qaeda hence, the bond became stronger. Through this union, Al shabaab has

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<sup>339</sup> Nancy Kariguthua, 'Role played by Kenya in the fight against piracy and armed robbery against ships in waters off the coast of Somalia; Abstract presentation to be made at the Ninth meeting of the consultative process on oceans and the law of the sea, "overview of threats to maritime security, their impacts and responses thereto with a focus on piracy and armed robbery against ships"'.  
<sup>340</sup> LTCA Geoffrey Kambere, 'Financing Al shabaab: The vital port of Kismayo' (2019) 9(1) *CTX*.

<sup>341</sup> Home Treasury, 'The National Terrorist Financing Risk Assessment' (2018).

<sup>342</sup> *Ibid*.

managed to get finances through Al-Qaeda especially from its supporters who upon Al-Shabaab alleging support to Al-Qaeda, became sympathetic towards it too.<sup>343</sup>

Al-Shabaab's affiliation to Al-Qaeda has given it very many benefits including training, funding and recruitment. Al-Qaeda works with Al-Shabaab in sharing ideas on how to go about training their men on use of explosives, how to carry out assassinations and the practice of indoctrination. Al-Qaeda remains the major foreign donor to Al-Shabaab terror organization. Through donations alone, Al-Shabaab gets more than 100 million dollars hence Al-Qaeda seemingly plays a huge role in Al-Shabaab's life as a terrorist organization.<sup>344</sup>

### **3.1.8 Smuggling Contraband Sugar**

It has been reported that Al-Shabaab group colludes with some members of the Kenyan Army Forces to smuggle contraband sugar across the borders of Kenya into the country. This illegal activity has been going on since 2015 and has been one of the means of raising money by this terrorist organization.<sup>345</sup> High ranking officials within the Kenya Defence Forces are part of a smuggling network working together with Al-Shabaab group to smuggle sugar with no fear of prosecution since they enjoy protection from the government.<sup>346</sup> Referred to as the 'black and white trade', illegal sale of sugar from Somalia reaps huge sums of money for this terrorist organization and since it involves highest office holders within the Government, it becomes hard to dismantle hence, a continued and permanent source of income for Al-Shabaab.<sup>347</sup>

The challenge arising from the sale of charcoal and sugar is that there exist some of the members of the Kenya Defence Forces, who, still collude with the terrorist organization to continue with the trade hence creating a hurdle in the fight against terrorism financing.<sup>348</sup> Institute for security studies have researched and found out that apart from

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<sup>343</sup> Stadford University, 'Mapping Militant organizations' (2009).

<sup>344</sup> Pamela G. Faber, 'Al-Shabaab: An Al-Qaeda affiliate case study' (2017).

<sup>345</sup> Claire Felter, Jonathan Masters et al, 'Al-Shabaab' (31 January 2019) Council on foreign relations.

<sup>346</sup> Ibid.

<sup>347</sup> Journalists for justice, 'Black and White: Kenya's criminal racket in Somalia' (2015).

<sup>348</sup> Ibid.

smuggling contraband sugar, Al shabaab also smuggles gold from Democratic Republic of Congo through the borders of Kampala, Dar es Salaam and Nairobi. This group works together with the ADF-NALU to smuggle the gold, Through this smuggling, the organization makes enough money to aid in their activities. The decision to smuggle gold came as a result of the previous smuggling of contraband sugar coming to an end.<sup>349</sup>

Kenya is yet to pass a law or come up with regulations on importation of contraband or poisonous products in the country. It has been discussed in the Parliament of Kenya, however, the country is yet to regulate and prohibit such acts hence, terrorists in collusion with the senior government officials may continue to engage in such illegal acts which give money to these fellows.<sup>350</sup>

### **3.1.9 Extortion**

The members of this organization use roadblocks within Mogadishu area to target merchants who pass by those areas. Once caught, the merchants are forced to give out money to the group. For every roadblock, a total sum of 5,000 US Dollars is earned per day.<sup>351</sup> Further, they extort cash from poor communities who have no means of defending themselves hence become susceptible to the terrorists. Apart from extorting cash, these terrorists take advantage of such scenarios to recruit forcibly children as suicide bombers and soldiers. The alleged motive driving these persons is that the targeted persons are to pay for everything, the only exception being fee for entering the mosques.<sup>352</sup>

Another way through which this terror organization extorts money is through attacking trucks transporting food and other amenities to refugees within the Somali region. Money carried

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<sup>349</sup> CCTV News, '*Al shabaab funding attacks by smuggling gold*' (28 March 2016).

<sup>350</sup> See Parliament of Kenya Deb 20 June 2018 < [http://www.parliament.go.ke/sites/default/files/2017-05/Wednesday\\_20th\\_June\\_2018.pdf](http://www.parliament.go.ke/sites/default/files/2017-05/Wednesday_20th_June_2018.pdf)> accessed 9 October 2019.

<sup>351</sup> Ibid.

<sup>352</sup> Jason Burke, 'Al shabaab plundering starving Somali villages of cash and children' *The Guardian* (Nairobi, 21 Feb 2018).

from refugee donors is handed over to these terrorists hence the aid money ends in their hands.<sup>353</sup> In Kenya, extortion of money by threats is an offence under the Penal Code.<sup>354</sup>

### **3.1.10 Provision of Social Services**

Al-shabaab terror organization use resources to gain more money. In a bid to increase their popularity among the local populations, this group seeks to provide social services such as offering Islamic religious education and distribution of food and medicine to the needy in the societies. Through these acts, this group captures the videos and images of the people and their members as they distribute. These images are then used in the social media or pamphlets to showcase and spread propaganda indicating how good they are and deserving to be financially supported for the good course to progress.<sup>355</sup>

Offering such information with an intention to get recruit more youths into Al shabaab terrorist organization amounts to radicalisation. In Kenya, forceful radicalisation involving recruitment to Al shabaab and the Mombasa Republican Council is takes place.<sup>356</sup> In a bid to combat the same, the Government has introduced measures such as youth empowerment projects, provision of youth development fund and uwezo fund to support the youths in their projects.<sup>357</sup>

The Prevention of Terrorism Act<sup>358</sup> establishes the inter-Ministerial Committee which deals with suppression and disruption of proliferation and radicalization. The Prevention of Organized Crimes Act<sup>359</sup> and the Money Laundering Act<sup>360</sup> also assist in regulating such activities.

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<sup>353</sup> Sam Kiley, 'Funding Al shabaab: How Aid money ends up in terror group's hands' *CNN* (12 February 2018).

<sup>354</sup> Section 300/1(A) of the Penal Code, Cap. 63 Laws of Kenya.

<sup>355</sup> Benjamin P. Nickles and Mr. Samuel E. Cleaves, 'What money means for terrorism in Africa' (December 2018) Africa Policy Brief.

<sup>356</sup> Anneli Botha, 'Radicalisation in Kenya: Recruitment to Al shabaab and the Mombasa Republican Council' (2014) ISS Paper 265.

<sup>357</sup> Nguzo za Haki, 'Youth radicalization in the Coastal Region' (2016) 12.

<sup>358</sup> Act No. 30 of 2012.

<sup>359</sup> Act No. 6 of 2010.

### **3.1.11 State Sponsorship**

Eritrea, amidst denial from her, has been reported to be sponsoring Al-shabaab terrorist organization with an aim of countering authority over the regional territory. In its released report, the United Nations has indicated that Eritrea has been sending about 80,000 dollars every month to members of the Al-shabaab organization for over ten years now. Other countries reported to be funding this group include Syria, Iran, Qatar and Yemen who, apart from finances, also issue weapons to the group.<sup>361</sup>

However, in its annual reports in 2018, the United Nations Security Council lifted its arms embargo, travel ban, asset freeze orders together with other sanctions it had laid against Eritrea. It cited lack of evidence sufficient to support the notion that Eritrea was supporting Al shabaab.<sup>362</sup> Mercy<sup>363</sup> explains that political schemers are a potential source of finances for this terror organization.

The laws discussed under chapter two prohibit acquisition or provision of monetary contributions from any source for purposes of carrying out or facilitating a terrorist attack. This means that all the sources of finances for this terrorist organization including state sponsored terrorism are illegal under the law since they are meant for terrorism.

### **3.2 Movement of its funds**

This terror organization moves its funds through three major ways. Firstly, they use the normal and standard banking system through which they channel their funds to their members across the countries. Secondly, they use the traditional and informal system of hawala which is mostly not easily linked to the terrorists since it uses brokers. This hawala system is majorly used since third parties are the ones on the limelight, nevertheless, if the

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<sup>360</sup> Act No. 9 of 2009.

<sup>361</sup> LTCA Geoffrey Kambere, 'Financing Al shabaab: The vital port of Kismayo' (2019) 9(1) CTX.

<sup>362</sup> United Nations Security Council, Resolution 2444 (2018) Adopted by the Security Council at its 8398<sup>th</sup> meeting, on 14 November 2018.

<sup>363</sup> Mercy, interviewed on 11 June 2019 in Nairobi.

broker is suspected of being associated with terrorism, then the assets are frozen hence the challenge posed by this system of funds transfer.<sup>364</sup>

The formal banking system in Kenya has numerous regulations as discussed in Chapter Two which have procedures on how to stop the movement of funds across the various financial institutions. The regulations<sup>365</sup> list down processes such as how to carry out due diligence on customer identification and ways through which these sources can be stopped such as freezing.<sup>366</sup>

The contributors to the funds of this terror organization including the Somalis living in the diaspora transfer funds through use of wire transfer systems including western union and money gram.<sup>367</sup> Other ways through which this organization transfers its funds include through trade based money laundering, use of money transfer services, cross border cash smuggling and e-cash services.<sup>368</sup>

All these processes are captured under the statutes and regulations discussed in Chapter Two above. According to the laws, especially the regulations which describe how movement of funds is done by these terrorists, banking and financial institutions and all relevant stakeholders should be able to detect money being transferred to this terror organization from Kenya. Money laundering for example, is controlled under the Money Laundering Act.

### **3.3 How Al shabaab allocates its funds to its activities**

In general, money received by the finance department of Al-shabaab is distributed into three major portions that is, logistical expenses, emergencies and part payment to the ministries in charge of the regions where taxes were collected from. The emergency fee is sent to the

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<sup>364</sup> LTC Geoffrey Kamere, 'Financing Al shabaab: The vital port of Kismayo' (2012) 2(3) Combating Terrorism Exchange.

<sup>365</sup> Regulations by the Capital Markets Authority, Insurance Regulatory Authority, Central Bank of Kenya and Law Society of Kenya.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid.

<sup>368</sup> World bank, Pirate trails: Tracking the illicit financial flows from pirate activities off the horn of Africa' (2013).



leaders of the Al shabaab group and saved to be used during crisis. The head of finance is also mandated to send money to every regional head for use in an ongoing or intended operation.<sup>369</sup>

This terrorist organization has a contingency fund and is paid as a subsidy to the office heads in the various regions. This fund can range from 3,000 dollars to 10,000 dollars per month. It is noteworthy that the contingency fund must be topped up every month regardless of whether it was used and exhausted or not. There are a total of nine administrative regions for the entire organization.<sup>370</sup>

### **3.3.1 Recruitment Process**

This terrorist organization targets the young people since they are considered vulnerable and in curious to change the political organizations. This process takes a while since it involves interviewing the recruits and sharing the organization's mission through propaganda and fake promises. Most often it takes a period of 30 days.<sup>371</sup>

In order for the organization to achieve its mandate of recruiting more members, it focuses on its intelligence group which comes up with strategies on how to ensure they convince persons to join the group.<sup>372</sup> Since the group targets young people who most often are unemployed, the justification given for joining the organization is that the recruits will receive monetary motivations for their families in place of killing people.<sup>373</sup>

The Al-shabaab organization uses compulsory recruitment as the main mode of getting new members into this group. The target group is mostly orphans or children who have distanced

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<sup>369</sup> Ibid pp. 6.

<sup>370</sup> Ibid pp. 9.

<sup>371</sup> International Crisis Group, 'Al-shabaab Five Years after Westgate: Still a Menace in East Africa' (21 September 2018) Africa Report.

<sup>372</sup> Anneli Botha and Mahdi Abdile, 'Radicalization and Al-shabaab recruitment in Somalia' (September 2014) *Institute for security studies*.

<sup>373</sup> Anne Speckhard and Ardian Shajkovci, 'The Jihad in Kenya: Understanding Al-Shabaab Recruitment and Terrorist Activity inside Kenya-in Their Own Words' (2019) 20(1) *African Security*.

themselves from their families, otherwise referred to as ‘rebels’.<sup>374</sup> Research shows that Al shabaab usually targets children aged between 12 and 16 years since these children are believed to be innocent with no idea of the consequences of their actions.<sup>375</sup> Further, money is used by this terror group as an incentive paid to the intended recruits.<sup>376</sup>

The second motive used by this group to recruit is through the means of an economic incentive. Economic incentives include payment of salaries which when presented to the interviewees, they agree to join the terror organization. The salaries range from between 60-200 US Dollars. For the recruits who are to train as suicide bombers, their families are paid a huge sum of money before the terror attack and after the suicide bomber has died.<sup>377</sup>

Al-shabaab has websites where it puts its information with a view of attracting more members. Websites have to be maintained and this requires money to be used. In Kenya, technology is regarded highly by the youth hence, a mode that has been identified by these terrorists.

Recruitment in Kenya often occurs through the internet whereby Al-shabaab provides propaganda materials, websites and you tube videos. The links to these sites and videos are mostly sent over email across the Islamic communities.<sup>378</sup> Statistically, in 2011-2014, this terror organization recruited about 1,000 persons from Kenya and Tanzania alone, with majority of the recruits being of Kenyan Nationality. These recruits were facilitated to travel to Somalia where they were to undergo the extensive training and be taught how to fight.<sup>379</sup>

As a way of convincing new recruits to join the organization, it is reported that they would be given a promise of a huge consideration. In most cases, these recruits are always interested in

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<sup>374</sup> Ibid.

<sup>375</sup> Okwir Martin, “Children at risk: Protection of children in Somalia” (2013) 4(5).

<sup>376</sup> Immigration and Refugee Board of Canada, ‘Responses to information requests (RIRs)’ (2011).

<sup>377</sup> Roland Marchal, ‘The rise of a Jihadi Movement in a country at war: Harakat Al-shabaab al Mujaheddin in Somalia’ (March 2011).

<sup>378</sup> Callie J. Burke, ‘The culture of terrorist propaganda in Sub Saharan Africa: A case study of Al-shabaab’s use of communication technologies in Somalia and Kenya’ (Master of Arts, Tufts University 2018).

<sup>379</sup> Daniel Torbjornsson and Michael Jonsson, ‘Containment or contagion: Countering Al shabaab efforts to sow discord in Kenya’ (2016) *Studies in African Security*.

money compared to being a part of the global terror organization. One military person confessed that during recruitment, he was promised a sum of 400 US Dollars as a start up bonus alongside a monthly salary.<sup>380</sup> Financing of recruitment of persons into Al shabaab terrorist organization is illegal under the Prevention of Terrorism Act.<sup>381</sup>

### 3.3.2 Salaries

This forms one of the largest expenditure by this terrorist organization. Salaries are payable to policemen, soldiers, regional administrators and orphans. Orphans, in this instance, in the opinion of this study, are usually children belonging to mostly members of this terrorist organization who agreed to act as suicide bombers during the terror attacks and entered into an arrangement with the leadership to take care of their dependents. Moreover, salary is also paid in form of maintenance to loyalties who are not employed by the organization but are nevertheless accountable and follow the rules of the group.<sup>382</sup>

Non-married foot soldiers receive around 30 dollars a month as a start up salary whereas the married ones receive an additional fund of 30 dollars per wife and 20 dollars for every child.<sup>383</sup> This means an example of a terrorist who has two wives and five children, salary payable to him monthly would be a sum of 190 dollars which converts to 19,000 in Kenyan Shillings. In a particular year, this group may have 5000 active soldiers making their total salaries to be about 3 Million dollars.<sup>384</sup>

The Amniyaat Mukhabarat, Al-shabaab's intelligence Unit is tasked with gathering intelligence for use in identifying, attacking and destroying all set targets against them before they harm them. Moreover, they also aim to find intelligence on the proposed areas of attack,

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<sup>380</sup> Stig Jarle Hansen, 'Al shabaab in Somalia: The history and ideology of a militant islamist group' (C. Hurst and Co. Publishers, Rev. Edn 2016)

<sup>381</sup> Section 13.

<sup>382</sup> Anneli Botha and Mahdi Abdile, 'Radicalization and Al-shabaab recruitment in Somalia' (September 2014) *Institute for security studies*.

<sup>383</sup> Ibid

<sup>384</sup> Ibid.

draw out plans on how to carry out the said attacks, write down the logistical expenses needed for the intended operations and finally, advise on how to make the best attack.<sup>385</sup>

This intelligence group is the highest paid in the Al-shabaab organization. Their start up salary is 200 dollars per month alongside other financial benefits meant for use when based in enemy countries. Their expenditure is approximately 1.5 Million dollars. For commanders and administrative officials, their basic salary ranges between 200 dollars up to 400 dollars a month depending on one's rank in the Al-shabaab's military service. It is reported that roughly 11 Million dollars is spent on the Military service per year.<sup>386</sup>

The tax collectors within this terror organization pocket a salary of 100 dollars per person every month. Persons based within the military camps are paid by way of cash whereas the soldiers located outside the camps are paid through mobile money transfer services.<sup>387</sup>

Most of the funds transfer is done through '*Hawala*' which is a method that has been used extensively by this terrorist organization.<sup>388</sup>

### **3.3.3 Machinery**

In 2018 alone, Al-shabaab was reported to have used guerilla warfare tactics in all the terrorist activities it carried out across the world.<sup>389</sup> In the recent past, it has been noticed that this terror organization invests in improvised explosive devices to carry out their attacks. These devices are imported from the Al Qaeda terror organization based in the Arabian Peninsula in Yemen. These devices work out to aid Al-shabaab achieve its target of killing hundreds of persons in a single attack. An example is 14 October 2017 when it attacked

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<sup>385</sup> David Goldman, 'Amniyaat, Al Shabaab Intelligence Unit' *Strategic Intelligence Service* (17 February 2012).

<sup>386</sup> United Nations Security Council, 'Letter dated 2 November 2017 from the chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council' (2017).

<sup>387</sup> Ibid.

<sup>388</sup> Eva Entenmann and Willem Van Den Berg, 'Terrorist financing and virtual currencies: Different sides of the same bitcoin?' (2018) International Centre for Counter-Terrorism-The Hague.

<sup>389</sup> < [https://www.un.org/sc/ctc/wp-content/uploads/2019/02/N1846950\\_EN.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2019/02/N1846950_EN.pdf) > accessed 14 June 2019.

Somalia and through the use of explosive devices in only two trucks, at least 350 people died.<sup>390</sup>

Apart from the international terror organization sending the devices to Al-shabaab, 60% of these explosive devices are acquired locally especially from sub-munitions dropped by Kenyan Air planes and other counter terrorism forces such as AMISOM when they are attacked by this terror organization and over run.<sup>391</sup>

Other cheaper and easily accessible explosive devices such as mobile phones, motorcycle alarms are acquired within the Mogadishu markets. The technique used with the explosive devices, which has worked out for this organization, involves sending suicide vehicle-borne IEDs which break through security walls thereafter followed by suicide bombers with the explosive vests who kill a large population before exploding themselves.<sup>392</sup>

The transportation of materials from Yemen to Somalia has been confirmed through reports by the United Nations Security Council which through its authorities, has intercepted military equipment being sent to Al-shabaab. In Yemen, there exist arms traffickers who associate with persons in the administration allegedly paying allegiance to the group who aid the traffickers to acquire the ammunitions.<sup>393</sup> The United Nations has also found out that Al-shabaab could possibly be manufacturing its own home-made explosives to be used in the improvised devices.<sup>394</sup>

As regards military attire, the United Nations Monitoring Group has investigated and realized that Al-shabaab upon attacking Somalia and killing its military personnel, it inherits the military attire. This is confirmed through several of its attacks within Somalia where the

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<sup>390</sup> Daisy Muibu and Benjamin Nickles, 'Foreign technology or local expertise: Al shabaab's IED capability' (November 2017)10(10) *CTC Sentinel*.

<sup>391</sup> Ibid.

<sup>392</sup> Ibid.

<sup>393</sup> United Nations Security Council, 'Letter dated 7 November 2018 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council' (2018).

<sup>394</sup> Ibid.

terrorists have been pictured wearing military attire belonging to Somalia Government military group, which uniforms have mostly been donated by the United Nations. Further, police officers within the Government's military groups, mandated to distribute the uniforms are the ones who share the uniforms with the terrorists. Report indicates that some of the identified police officers have been dismissed from the military force by the Somali Government.<sup>395</sup>

The pricing cost of the military attire for one police uniform amounts to between 30 to 40 dollars including the beret whereas the matching boots cost between 18 and 20 dollars. These costs are spared for the terrorists since they link up with their agents within the police departments who give them for free.<sup>396</sup> For the illicit flow of ammunition from Puntland originating from Yemen, it is reported that Al qaida spends about 130,000-160,000 dollars a month for the ammunition.<sup>397</sup>

In planning an attack, alongside the machinery to be used during the execution of the attack, this organization also has in place radio aerials, computer drives and vehicle number plates. The radio aerials are to be used for internal communication within the terrorist cells before and during the attacks.<sup>398</sup> For the vehicle number plates, the terrorists need vehicles to move within the targeted zones hence, they seize vehicles and impose the number plates most often already registered in that particular country.

Al-shabaab, alongside purchasing equipment to be used in warfare, it engages in theft of equipment to avoid incurring losses. United Nations' Offices located in Baidoa, have been looted and communication items stolen by these terrorists. Six of the UN compounds have

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<sup>395</sup> Ibid.

<sup>396</sup> Ibid.

<sup>397</sup> Ibid.

<sup>398</sup> Ibid.

been seized including their equipment. Further, 16 Non Governmental Organizations' offices based in Somalia have been raided and all their equipment repossessed by Al-shabaab.<sup>399</sup>

### 3.3.4 Training costs

Training for members of Al-shabaab group takes place in their various military camps. For new recruits, the period taken for training is roughly six months. During this period, the recruits are taken through a rigorous training. After the completion of the six months training, they undergo a graduation ceremony attended by Al-shabaab's spokesman, who is the only individual willing to show his face on the media.<sup>400</sup>

During the graduation ceremony, the graduands are reminded of their oath and obligation towards the organization. The graduands are taken from all over the world, America, Africa and Asia. Upon graduating, the leaders decide which person joins which unit within the Al shabaab organization.

Nevertheless, the most popular unit is the Suicide brigade which only accepts the best recruits. Yet, what is shocking is that there exists a waiting list of recruits waiting to be part of the brigade.<sup>401</sup>

### 3.3.5 Food and Accommodation

Foot soldiers are budgeted to eat about 2 dollars per fighter per day.<sup>402</sup> It is reported that the suspects behind the Dusit 2 Hotel attack lived in Ruaka area in Kiambu for a certain number of months as they planned the attack.<sup>403</sup> Ruaka estate is a prime location<sup>404</sup> and only middle class and above members of the community can afford to stay there, a clear indication that

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<sup>399</sup> Stadford University, 'Mapping Militant organizations'(2009) Ongoing research project; See also Martha Crenshaw, Gary Lafree and Sue-Ming Yang, 'Trajectories of Terrorism: Attack Patterns of foreign Groups that have targeted the United States', 1970-2004 (2009)(8) *Criminology and Public Policy* 445-473.

<sup>400</sup> Channel 4 News, Inside an Al shabaab's terrorist training camp (2014)  
< <https://www.youtube.com/watch?v=enRVsBDz1oo>>.

<sup>401</sup> Ibid.

<sup>402</sup> Supra, fn 15.

<sup>403</sup> Cyrus Ombati, 'Two suspects arrested over Dusit terror attack as hunt for more goes on' *Standard Newspaper* (Nairobi, 16 January 2019).

<sup>404</sup> Ruaka Neighbourhood guide.

Al-shabaab terrorists have enough resources to afford such a living. Further, it can be deduced that this terror organization aims to ensure it gives its members a well suitable and polished lifestyle as they are prepared to initiate a terror attack.

Generally, use of money to finance any terrorist activity is illegal hence allocation of funds by Al shabaab to payment of its salaries, food and accommodation amounts is covered under the Prevention of Terrorism Act, hence, prohibited.

In the opinion of this study, if the procedures underlined in the various legislations and regulations in Chapter Two are followed to the core, then this terror organization will not be able to get into this third tier of financing process which is to allocate funds to its various activities. It therefore calls for a through implementation of the laws and regulations to curb this financing process.

### **3.4 Financing of Terror Attacks in Kenya by Al Shabaab Terror Organization vis-à-vis Counter Financing by the Kenyan Government**

The African Union military force in Somalia seeking to bring down the Al-shabaab terror organization comprises of 22,000 troops. Kenya contributes approximately 4,000 troops to this number.<sup>405</sup> It is documented that Kenya spends about 233,000 to 2.4 Million US dollars every month to carry out an attack in Somalia by its authorities. This has posed a financial crisis upon the Kenyan Government and it is indicated that the larger African Union has also faced the challenge of inability to finance this action. The inability of the African Union to finance the mission in Somalia, has compelled it to rely on international assistance.<sup>406</sup>

Financing or funding a terrorist attack is relatively cheap compared to financing of a counter terrorism attack. This challenge arises from the fact that in as much as a state may set aside funds to combat terrorism locally, most of the finances come from outside the borders of a

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<sup>405</sup> Tomi Oladipo, 'What happened when Al shabaab attacked a Kenyan base in Somalia?' *BBC News* (2016).

<sup>406</sup> Lesley Anne Warner, 'In Somalia, Kenya risks death by a thousand cuts' 3(3) pp. 105-118.



particular country. Hence, it cannot be estimated how much might be required to fund the global counter terrorism.<sup>407</sup>

The United States of America in attempting to curb terrorism financing has tried to invest in ‘defunding terrorism’. This has been achieved through reinforcing the intelligence system, passing rigorous and strict laws, and generally taking greater precaution when dealing with the charitable organizations together with shell companies which are exploited by the terrorists.<sup>408</sup>

It is interesting that amidst the rise in terrorism cases in Kenya, there has been no specific budget set aside to tackle the issue of counter terrorism. Instead, it is all lumped up in the fund set aside for national security. In the latest 2018/2019 Budget policy statement, the targets indicated under the aspect of the requirement to improve national security included to modernize the National Police Force, to facilitate research on more ways of emerging crimes especially technology related and provision of more housing units, insurance policies and medical covers for police officers. Nowhere In the document is it indicated that the budget will seek to increase the figure set to combat global crimes where terrorism lies.<sup>409</sup>

The 2019/2020 budget has set aside 7.1 Billion shillings towards the Criminal Investigation Services.<sup>410</sup> Since there are various agencies and government departments involved in combating terrorism financing, consideration of budget variances across the years since the Prevention of Terrorism Act was implemented is necessary. In considering the budgets set aside over the years by the Kenyan Government for national security, (see table attached at appendix iv), it is clearly evident that the budget is estimated based on Kenya’s capability to finance its activities and not based on the severity of attacks or frequency of terrorism threats to the country.

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<sup>407</sup> Shima Baradaran et al, ‘Funding terror’ (February 2014) 162(3) *University of Pennsylvania Law Review* pp. 477-536.

<sup>408</sup> Ibid.

<sup>409</sup> Parliamentary Budget Office, ‘Unpacking of the 2019 Budget Policy Statement’ (2019) pp. 34.

<sup>410</sup> <https://www.capitalfm.co.ke/business/2019/06/a-snapshot-of-the-2019-2020-budget-proposals/> accessed 24 June 2019.

The budget allocations to national security in Kenya is a constant if not, it ranges within a particular figure plus or minus across the years since terror attacks became prominent in Kenya. However, there is no recorded information or study with figures pertaining to how much Al-shabaab spends in a particular attack. Hence, the Kenyan Government comes up with the budget through a ‘guess mode’ hoping that the allocation would be sufficient to curb terrorism in a particular year. Further, the fund is generally for national security and not a specific fund set aside to deal particularly with terrorism.

Perhaps it would be advisable, in the opinion of this analysis, for Kenya to undertake a case study approach on countries where terror attacks are less or unheard off and compare the budget allocations to national security. Suffice to say, the figure set aside for counter terrorism should always be higher than the amount spent by a terror group in a particular attack.

### **3.5 Challenges Faced in Curbing Terrorism Financing against Al-shabaab and Other Terror Organizations**

Kenya and the global world at large face a threat of terrorism financing hence the increase in numerous terror attacks across the world. Some of the challenges that have made it impossible to curb terrorism financing especially against Al shabaab include:

#### **3.5.1 Porous Borders<sup>411</sup>**

Porous borders are borders of a state which can easily be perforated through due to inability of the authorities who man them.<sup>412</sup> An example of the porous borders in Kenya is the border between Kenya and Somalia which is open and spans about 700km. It allows thousands of illegal migrants and asylum seekers to move into Kenya both to stay in the country and to use

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<sup>411</sup> Task force to investigate terrorism financing of the Committee of financial services U.S. House of Representatives One hundred Fourteenth congress second session, ‘The enemy in our backyard: Examining terror funding streams from South America’ (June 8, 2016).

<sup>412</sup> Koros Jebich Anne, ‘Assessing the challenges facing the department of Immigration services in preventing illegal immigration of Ethiopians into Kenya’ (MA Thesis, University of Nairobi 2018) pp. 8.

Kenya as a transit border to other African Countries.<sup>413</sup> Minny<sup>414</sup> expounds on this challenge and states as follows:

“Refugee camps have in some cases provided a loophole for terrorists to come into the country (they claim to be refugees or radicalisation takes place) and can be harboured there. Closure of such camps calls for support from international humanitarian organizations that impose stringent and unfavourable conditions to the host country. Hence, the loophole remains.<sup>415</sup>”

Other countries which share borders with Kenya include Ethiopia and South Sudan, which borders are protected by members of the Kenya defence forces, Police Officers and General Service Unit officers.<sup>416</sup> In attempting to deal with the issue of porous borders, Kenya built a Kenya/Somali Border wall to prevent terrorists from entering the country, however, with corrupt officials manning the border, the same has not been effective.<sup>417</sup>

### **3.5.2 Corruption**

This is an abuse of power where the culprits often have the intention of personal gain mostly money. Politicians who are sponsors of or support Al shabaab terror organization can loot money or look for ways of fishing out cash from the government. It is indicated that corruption and poor governance weaken state institutions and departments hence making them less effective in the fight against terrorism. They become less effective in that terror groups can then easily take advantage of such a situation. State security being a pillar of a nation, with corruption, the army, judiciary and the defence sector cannot function properly hence an environment created easily for terrorism and definitely, terrorism financing.<sup>418</sup>

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<sup>413</sup> Danish Refugee Council, ‘Kenya country profile’ (April 2016).

<sup>414</sup> Minny, interviewed on 12 June 2019 in Nairobi.

<sup>415</sup> Ibid.

<sup>416</sup> Judie Kaberia, ‘Kenya’s porous borders under scrutiny: Last year’s Nairobi Mall attack highlighted weakness of frontier checks’ *Global Voices Africa* (Nairobi, 15 January 2014).

<sup>417</sup> Brendon John Cannon, ‘Terrorists, Geopolitics and Kenya’s Proposed Border Wall with Somalia’ (May 2016) 7(2) *Journal of Terrorism Research*.

<sup>418</sup> OECD, ‘Terrorism, corruption and the criminal exploitation of natural resources’ (October 2017).

### **3.5.3 Lack of Adequate and Efficient Legislation<sup>419</sup>**

One of the respondents disagreed with the assertion that the available legislations on terrorism financing are inadequate. He argued that they are adequate, the only challenge is on their enforcement which remains a deficient. However, proponents assert that inadequate regulation within financial and payment systems to curb money laundering and terrorism financing are real challenges. Even in Somalia, lawlessness and lack of effective government is a challenge experienced in the fight against terrorism financing.

This challenge arises due to non-adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Further, these legislations do not provide an effective way of freezing funds and other financial assets of persons involved in or associated with terrorism as well as preventing those funds from being accessed by terrorists. These loopholes in the laws on terrorism financing may be a reason why the Kenyan Government has been unable to control the funding to Al-shabaab.

### **3.5.4 Virtual Currencies**

Disguised financing that eventually ends up in supporting terrorism is one of the key challenges posed to the country in the fight against terrorism financing of Al shabaab. Further, this terror organization uses money laundering activities conceal most sources or use of money hence cannot be easily traced.

Most of this group's financing operations are undertaken indirectly through covert operations of non-profit making organisations which operate globally and have no obvious links or connections with the organization, hence poses a challenge to the governments in bringing an end to terrorism financing.

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<sup>419</sup> Eva Entenmann and Willem Van Den Berg, 'Terrorist financing and virtual currencies: Different sides of the same bitcoin?' (2018) *International Centre for Counter-Terrorism-The Hague*.

### **3.5.5 Lack of Adequate Finances**

Insufficient funds in a state inhibit the fight against terrorism financing. Money is at the core of any terror organization and its plans. It is therefore necessary that to fight the vice of terrorism financing, money is required. To combat terrorism, finances channelled towards the same by a state must be way above that spent by the terror organization hence, when a state has insufficient funds, then fighting terrorism financing becomes a hurdle.

### **3.5.6 Lack of Sufficient Capacity in Human Resource**

The relevant departments meant to deal with terrorism financing could be understaffed hence posing a challenge to sufficiently deal with such cases. Terrorism is a menace that cannot be fought by a one-man show. Hence, a proper, well and fully equipped department needs to be in place.

Further, Kenya as a country needs to put in measures to ensure it has in place enough persons in its reporting institutions dealing with counter terrorism.<sup>420</sup> With a significant number of personnel in the counter terrorism agencies, cases involving terrorism financing will be resolved faster. This alongside the specialized agencies will be able to work with the existing resources to curb terrorism financing.

### **3.5.7 Fragmented Approach in Dealing with Terrorism**

Kenya lacks a unified system to combat terrorism financing. The relevant state agencies work separately as independent bodies hence it becomes a challenge to share crucial and critical information and come up with better ways on how to curb terrorism financing.

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<sup>420</sup> United Nations Office of Counter-Terrorism, 'UN Global Counter-Terrorism Strategy' (Adopted by consensus in 2006).

### **3.5.8 Lack of Cooperation from Other States**

In the opinion of this study, lack of cooperation from some states supporting the organization under the guide of state autonomy, may pose as a challenge to combating terrorism financing against this organization. Moreover, most of this organization's sources of income are rooted in illegal trade and dealings which spread across or involve a string of countries, hence, issues of jurisdiction and extradition become difficult especially where some of the states are uncooperative.

### **3.5.9 Lack of effective implementation of the legislation that is already enacted**

Another challenge faced in an attempt to control or close the sources of finances for Al-shabaab terror organization is the enforcement of the laws that are in place within the context of evolving techniques that such criminal enterprises employ to sustain their operations.

Mel<sup>421</sup>, a tax enforcement officer at KRA, states as follows:

“The available laws are sufficient however, enforcement has been the main challenge. Terrorism is an expensive offence to prosecute as it requires a range of expert witnesses who are often expensive to procure. In addition, the evidence involved being cyber in nature from off shore banking, creates a dynamic when it comes to being presented and produced in court as it is complex in nature.”<sup>422</sup>

For a law to be effective, there must be compliance to the core. Compliance may be forced upon someone or a person decides to comply on his/her own volition.<sup>423</sup> The reverse is true. Without compliance, the effectiveness of the law becomes questionable. Therefore, it all comes down to awareness of the laws in place. Without knowledge of the laws, there would be no compliance. On the other hand, even with persons knowing what the law states, failure of the officials to enforce the law makes them ineffective hence a challenge in the implementation process.

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<sup>421</sup> Mel, interviewed on 19 June 2019 in Nairobi.

<sup>422</sup> Ibid.

<sup>423</sup> Anthony Allott, 'The effectiveness of laws' (1981) 15(2) *Valparaiso University Law Review* pp. 229-242.

### **3.5.10 Challenges in the Judicial Systems and Processes**

Backlog of filed cases in courts of law across the country contribute to the stagnant reduction of terror cases. As is evident in the table (herein annexed) indicating the statistics of cases, most of the concluded cases have taken three or more years to be completed hence it may be assumed that the judiciary is not giving this menace the due regard it deserves.

The challenge of backlog results from an understaffed judicial system, with inadequate number of judicial officers, court interpreters, registry staff, insufficient technology systems, adjournment of cases and lack of collaboration from all the relevant stakeholders in the judicial system.<sup>424</sup> When a case involving terrorism is filed, it adds to the list of pending cases in the courts of law and has to be heard and determined after the cases filed earlier have been heard. This can take months or even years depending on the pending cases before the judicial officer.

### **3.5.11 Lack of Utilising Parallel Financial Investigations**

Parallel financial investigation when it comes to terrorism refers to the relevant offices focusing on terrorism offences and terrorist financing offences all at once. This concept extends organizations conducting their own investigations then they come together to discuss and compile the reports.<sup>425</sup>

Most organizations dealing with research on terrorism have been giving detailed reports following a terror attack, however, the Kenyan Government has in most cases assumed or neglected such reports which if considered would have assisted the country in planning ahead. If this move can be introduced in the fight against terrorism financing, then through the concerted efforts, this study believes, the cases will definitely reduce.

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<sup>424</sup> Peter Oduor Ooko, 'The implication of case backlog on the right to access to justice in Kenya; A case study of Mavoko Law Courts' (Thesis, University of Nairobi November 2018).

<sup>425</sup> Financial Action Task Force, 'Operational Issues Financial Investigations Guidance' (June 2012).

### **3.5.12 Ineffectiveness of the ‘Nyumba Kumi’ Initiative**

This initiative, was implemented by the Kenyan Government in 2013 to aid in knowing one’s neighbour thereafter assist in identifying criminals more so terrorists. It was introduced through a presidential order following numerous cases of terrorism across the country. Further, it was to act as a model for solving terrorism.<sup>426</sup>

Most of the youths especially within the Eastleigh area were and have been aware of the ‘Nyumba kumi initiative, however, majority have been disinterested in engaging in the process. Reasons posed include lack of consultation, leaders not knowing what is expected of them in the initiative and a gap existing between the said community elders and the youth.<sup>427</sup>

### **3.5.13 A Dark Web Platform used by Terrorists**

Dark web refers to the corners of an online network whose content has been hidden and cannot be easily accessed unless through authorization by the ‘user’. This network is hidden by the creator who then uses it for illegitimate purposes, and other illegal deals.<sup>428</sup>

Use of a ‘dark web’ by the terrorists may still pose a threat to ending the fight against terrorism financing. Virtual environments create an avenue for purchasing explosives, firearms, and even chemicals to be used by the terrorists during terror attacks.<sup>429</sup>

### **3.5.14 Lack of Adequate Evidence**

Insufficient or incomplete evidence against the suspected terrorism related cases’ fellows sufficient to warrant a conviction against the crimes of terrorism financing poses a challenge to curbing financing of this organization. An example of such a difficulty is the case of a

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<sup>426</sup> Walter Otieno Andhoga and Johnson Mavole, ‘Influence of nyumba kumi community policing Initiative on social cohesion among cosmopolitan sub locations in Nakuru County’ (2017) 1(6/12) *International Journal of Social and Development Concerns* 66.

<sup>427</sup> Wamaitha Ndonu, Nzioka John Muthama and Kariuki Muigua, ‘Effectiveness of the Nyumba Kumi Policing Initiative in Kenya’ (2019) 1(2) *Journal of Sustainability, Environment and Peace* 63-67.

<sup>428</sup> Kristin Finklea, ‘Dark web’ (10 March 2017).

<sup>429</sup>Supra, fn 272



suspected member of Al shabaab terrorist organization who benefits either by funding the organization internally or receiving funding through salaries or allowances.

Inadequate evidence in most cases leads to acquittal of terror related suspects since the prosecution is unable to prove his/her case beyond reasonable doubt as is required by the law. This was evidenced in the case of three suspects who were arraigned in a Kenyan Court and eventually acquitted since the prosecutor could not find any documentary evidence to support the assertion that the suspects were members of the terrorist organization.<sup>430</sup>

### **3.5.15 Lack of Ability to Clearly Distinguish Clean from Dirty Money**

This challenge hails from the fact that since most of these sources are legitimate, it is easy for these terrorist to conceal the true reason for the money. This, is mostly done by the non-profit organizations (NPOs) which pose as legitimate NPO's. Moreover, most of the financing operations for this organization are undertaken indirectly through covert operations of non-profit making organizations which operate globally and have no obvious links and/or connections with the organization hence a challenge.

### **3.5.16 Somalis in the Diaspora**

The Somalis in the diaspora, have an overwhelming sympathy for this terror group back in Somalia and send support often. They undergo community or religious victimization hence making it difficult to combat terrorism objectively.

Over three Million Somalis live outside Somalia. World bank reports show that these members of the Somali Community contribute huge sums of money to the Somali especially those in employment. In 2014 alone, about 27 Billion US Dollars was remitted to Somalia.<sup>431</sup>

With such onerous sums, it is very likely that some of the contributions go to Al shabaab hence keeping them affluent.

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<sup>430</sup> Malemba Mkongo, 'Why terror cases rarely get convictions' *Star Newspaper* (Nairobi, 29 October 2018).

<sup>431</sup> Mustafa Omar Abshir, 'Somali Diaspora Contribution to Somali's Development: An example of Somali Remittance' (October 2018) 7(10) *International Journal of Science and Research* 67.

### **3.5.17 Challenges Associated with Reactionary Approaches to Counter-terrorism**

A reactionary approach to counter terrorism is risky in that it is implemented based on resentment. It never considers the future since it aims at dealing or revenging with the terrorists during or immediately after a terror attack.<sup>432</sup> It is evident that Kenya through its legislature has been passing laws to combat terrorism immediately after major attacks. The rules, regulations and international conventions applying to Kenya have majorly been implemented upon an attack ensuing.

### **3.5.17 Failure of Banks to Question Financial Records of Long Term Clients**

Most Kenyan banks do not or rarely question the sources/streams of income of clients they regard as long term and loyal hence an easy way for terrorists or people to fund terror activities.

In support of this argument, Lucy<sup>433</sup>, an accountant working for a microfinance institution, states as follows:

The banking sector has frustrated control or closure, though having Know Your Customer (KYC) and Anti Money Laundering (AML) policies in place, most of the time the same is overlooked since most banks are driven by profit making motive.<sup>434</sup>

### **3.5.18 Socio-economic Limitations in Kenya**

With lack of jobs and a rise in unemployment in Kenya, most youths are easily lured into joining this terror organization with a promise of good life and ability to support their families. Once recruited and upon realization that the prospects are not as good as promised, they try to leave the organization. However, once a recruit, a decision to cease being a member only leads to death.

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<sup>432</sup> Ronald Crelinsten, 'Perspectives on counterterrorism: From stovepipes to a comprehensive approach' (2014) 18(1) Terrorism Research Institute.

<sup>433</sup> Lucy, interviewed on 11 June 2019 in Nairobi.

<sup>434</sup> Ibid.

### **3.5.19 Lack of Independence in Prosecution**

Since terrorists are either politically funded or corporately funded for financial gain, they hold enough power to control the outcome of the cases against them. The legal systems according are compromised hence most of the terrorists undergo prosecution as the actual perpetrators, but the financiers are rarely revealed.

In considering some of the reported conviction cases on arrested Al shabaab suspects, (**table annexed**) it is evident that most of the suspects arrested over the terrorist attacks that have taken place in Kenya overtime have not been convicted/acquitted. Most of these cases are still pending in the courts of law.

Ibrahim<sup>435</sup>, a respondent in this study indicates that he acted for a financial institution which deals with financing of businesses. The institution was suspected of being involved in terrorism related activities. However, after conclusion of the investigations, the freezing order was lifted since it was confirmed that the business was legitimate with no links to terror-related activities.<sup>436</sup>

### **3.6 Conclusion**

Whereas Al Qaeda has gained a global control, Al shabaab is increasingly gaining momentum and is soon taking over and becoming one of the most global threatening terror organizations. The havoc it creates in Somalia, Africa and beyond in as much as it has been listed under the United Nations Sanctions List, its modes of financing have remained intact making it a greater threat than even Al Qaeda, to which it is an affiliate.<sup>437</sup>

Lessons learnt from this terrorist organizations financial cycle is that finance is the lifeblood of terrorism. It is what drives Al shabaab to be considered a threat to humanity. Dismantling the sources of finances for Al shabaab is the only avenue for killing this terror organization.

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<sup>435</sup> Ibrahim, interviewed on 29 May 2019 in Nairobi.

<sup>436</sup> Ibid.

<sup>437</sup> Tom Keatinge, 'Reinvigorating the forgotten financial fight against Al-Shabaab' (May 2009) Commentary, Centre for Financial Crime and Security Studies, AML/CFT, Horn of Africa, Terrorism Africa.

Secondly, a huge percentage of financial resources for Al shabaab is derived from legitimate sources, hence it becomes tough to limit these financial sources. Thirdly, State Governments expected to be on the forefront in controlling and curbing terrorism financing of this terror organization are the same ones financing this group hence posing the question whether terrorism has become a global threat or not. Fourthly, most of the new recruits into this terror organization join it for survival and with hope of getting rich or having money since they lack job opportunities from their home countries. Finally, there exist numerous laws across the world on how to curb terrorism financing yet the existing laws have been unable to control the financial sources of this terror organization.

It is evident from the table annexed on reported conviction cases, that the courts of Kenya have and are in the process of trying and if evidence is produced, convicting members belonging to the Al shabaab terror organization. However, as the statistics on the membership of Al shabaab showed, as the court convicts one or two terrorists, Al shabaab continues to recruit and add more members to its cells. This observation indicates that perhaps we need to deal with the foundational basics first, and we will sort out the menace of terrorism. This confirms that when recruitment process which also involves finances is dealt with, then finances to this terror organization is curbed, then the group will be weakened.

A look at the reported conviction cases also indicates that the Police have only been able to arrest suspects associated with being members of the Al shabaab terror organization but not the financiers of the terrorist group.<sup>438</sup> The sources of finances identified for Al shabaab terror organization vis-à-vis the laws of Kenya shows that most of these illegal sources have in one way or another found their way into the Kenyan laws. However, the laws are so fragmented hence posing a challenge in their implementation. Illegal burning, sale and export of charcoal, kidnapping and payment of ransoms, piracy, sale of contraband sugar and all listed sources of finances for this terror organization are prohibited under separate laws.

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<sup>438</sup> See Appendix

Generally, the main law on terrorism financing, the Terrorism Act<sup>439</sup>, only broadly lists financing of terrorism as an offence but does not narrow down specific offence. Perhaps, in the opinion of this study, that is the reason why the conviction cases on terrorism financing are still on the low.

Nevertheless, through the discussion on financing by Al shabaab, it is evident that the Kenyan laws and regulations discussed in Chapter Two have taken into consideration the sources of finances (if not all) of this terrorist organization, how to prevent the movement of funds across the terrorist organizations and how to avoid the terrorists from getting the funds to allocate to their various activities. It therefore suits to say that the laws exist to curb terrorism financing for terrorist organizations including Al shabaab, therefore, theoretically, terrorism financing cases should be on the low hence terrorism cases should reduce. Nevertheless, that is not the case, hence therefore, confirms the research question that the laws on terrorism financing have not been fully implemented.

The next chapter discusses the findings of this study from the background set out in chapter one, to the regulatory framework on terrorism financing and finally to the discussion on Al shabaab terror organization. It draws the conclusion of this research based on the research questions set out in chapter one and the findings as per chapter two and three of this study. Finally, it makes its recommendations on how best the state can implement the said laws and bring an end if not, reduce the ever increasing cases on terrorism financing in Kenya.

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<sup>439</sup>(2012).

## CHAPTER FOUR

### FINDINGS, CONCLUSION AND RECOMMENDATIONS

*“Crippling terror funding is very crucial in fighting terror. It is a proactive measure that should involve both the public and private sector”<sup>440</sup>*

#### 4.1 Introduction

In Chapter One, the problem statement was identified and research questions listed. This research sought to identify whether the laws on terrorism financing are adequate or otherwise. In chapter two, the legal and regulatory framework of terrorism financing was laid down. All statutes and regulations relating to terrorism financing were identified and analyzed. It was concluded that there exist adequate laws, however, they are fragmented hence a reason for poor implementation. Chapter Two gave a justification for chapter three which sought to analyze the financial sources and standing of Al-shabaab terror organization, which has been linked to numerous major terror attacks in the country.

It analyzed the information gathered from the field study conducted in this research. It lays down challenges that are faced during the implementation of these terror financing laws and recommendations on how the Kenyan Government can better the fight against terrorism financing. Moreover, it gives a conclusion on whether the problem statement has been proven or disproved, whether the research questions are answered in the affirmative or not.

Chapter Three scrutinized Al-shabaab terror organization setting out the sources of its finances, the ways through which they finance themselves both legally and illegally and finally, gave an analysis of how the information was relevant vis-à-vis the discussion under chapter two. This Chapter gives a summary of the findings based on the research questions and sets out the recommendations necessary for ensuring a proper implementation of the terrorism financing laws in Kenya.

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<sup>440</sup> Monica, one of the respondents during the field study'

## **4.2 Findings**

Chapter One set out three research questions to be answered in this study. The first research question sought to find out whether the existing laws and policies on terrorism financing in Kenya are adequate in curbing terrorism financing. In Chapter Two, an analysis of all the laws and regulations on terrorism financing was done. It was found out that there exist legislations on terrorism financing. As to whether or not they are adequate, a field study was conducted, statistics drawn as to the cases on terrorism financing and it was concluded that the laws are partly adequate.

The second research question sought to find out whether there has been proper implementation of the laws on terrorism financing in Kenya. With the statistics on increase in terrorism cases in Kenya and the study carried out, this study found that the available laws have not been properly implemented. The third research question sought to find out the challenges that have arisen in the implementation process of the laws on terrorism financing. These challenges have been discussed partly in chapter three and chapter five.

This study therefore found out that the available laws on terrorism financing are inadequate and hence, there is need for the government of Kenya to revise them based on the mutating nature of terrorism financing. Further, as revisions are done, there is need to prioritize on the implementation of the already existing laws. This will help in curbing, to an extent terrorism financing.

## **4.3 Overall Conclusion**

This study was limited to desktop research and the field study targeted respondents from only Nairobi County due to constraints of time and resources. From the study carried out and the analysis done, it showed that the laws on terrorism financing are inadequate hence a reason for increase in terrorism financing cases. Further, that even with the available laws on

terrorism financing, implementation is a challenge as most reported cases on terrorism financing remain unresolved.

The results of this research could lead to changes in policies and laws. Therefore, there is need to fully implement the already existing laws on terrorism financing and modify them to suit the ever changing nature of terrorism financing.

#### **4.4 Recommendations**

In a bid to control financing of illegal activities, the Government of Kenya has attempted to revamp various financial institutions to fight terrorism financing.

1. Amend the law on terrorism financing to provide for a fund set aside to deal with terrorism alone;

In as much as the laws on terrorism financing are adequate, there is need for review of the laws to address new schemes used to finance terrorism. In amending this law, there should be a consideration on how to deal with cryptocurrency since it is the new mode used by the terrorists.

A specific fund set aside for counter terrorism would help in focusing solely on terrorism as a crime. This is justified because the fund set aside for defence is general and meant for all forms of crimes hence it becomes easy for the government to ignore the magnitude of the offence of terrorism.

2. Carry out awareness on the terrorism financing laws.

One of the respondents who handles finances in a large financial institution did not have any idea about terrorism financing and how terrorists can use financial institutions to clean their money.



Awareness is key especially in areas such as North Eastern Kenya where the education level amongst the youth is very low as well as poverty. It will help spread the knowledge on what terrorism is and the harmful consequences. Further, it will reduce the rate at which vulnerable youths are being lured into joining the terrorist gangs.

### 3. Citizen support in the fight against terrorism financing<sup>441</sup>

Every individual should take it upon him/herself as a responsibility to assist the state in curbing terrorism financing. This can be done through reporting of suspicious transactions or suspicious activities within and without one's area of abode and work.

### 4. Training and capacity building to judicial officers to ensure that they understand the law and the implications of terrorism financing

The government should involve relevant stakeholders including local and opinion leaders and citizens. Further, the judiciary should implement and enhance ongoing training opportunities for the judicial officers on matters related to terrorism and its financing so that the judges and magistrates get to understand and appreciate the dynamics of terrorism and its financing.

Finally, capacity building will ensure officers handling terrorism cases are well equipped to identify acts related to terrorism, their sources of financing and general intelligence on their target places of attack.

### 5. All government ministries, departments and agencies to be involved in the fight against terrorism financing

This entails an inter agency coordination and collaboration especially between the banking and security agencies.

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<sup>441</sup> A recommendation made by Henry, a respondent during the field study

The Betting and Licensing Control Board and the Immigration Department should also be part of the enforcement agencies. Betting is becoming a highly lucrative sport in Kenya and millions of shillings is exchanging hands every single day. It can easily form an avenue for manipulation and cleaning of dirty money by the terrorists. Hence, there is need for the betting board to have regulations in place with such consideration.

On the other hand, persons flying in and out of the country may decide to carry money from one source to another. Terrorists may use such a means to transfer money from one location to the other hence, there is also need for the immigration department to be more stringent in its searches and regulations especially on luggage for passengers.

6. Empowerment of investigatory, prosecutorial and adjudicatory agencies with skills, knowledge, attitude and values in proper implementation of such laws;
7. Enhanced transnational coordination of terrorism laws;

Countries like Kenya should invest more in technology that would effectively gain intelligence in respect of anticipated terrorist activities. Further, Kenya's law enforcement should benchmark with other countries like United States and Russia.

8. Strict enforcement of the requirement to declare and support source of moneys transacted by individuals with the financial institutions;
9. Having more stricter penalties for the offences related to terrorism financing;

The existing laws on terrorism financing should be more punitive to deter persons from engaging in terrorist activities.

10. Making effective the International Crimes Division of the High Court

This will enable terrorism financing cases to be dealt with adequately.

#### 11. Excessive screening of illegal immigrants into the country

There is need to do more screening of immigrants especially refugees to reduce the number of persons in the diaspora who support the Al shabaab terror organization.

12. Proper management and coordination of the special arm of the police unit in Kenya set to deal with terrorism to ensure proper implementation of the laws on terrorism financing.

13. The Government needs to consider the proposal by the Law Society of Kenya to recognize Advocates as a reporting entity<sup>442</sup> since they are also prone to terrorism financing.

14. The Kenyan Government needs to set up clear guidelines on the difference issues such as evidence, witness protection, extradition processes in instances of terrorism.

15. There should be a continuous research on counter terrorism especially terrorism financing since with the new and increasing technology, terrorists are becoming clever by day and coming up with new ways of acquiring resources.

## **4.2 Final Conclusion**

With the increasing cases on terrorism attacks in Kenya, this research sought to find out what the underlying problem could be. It decided to focus solely on the financial aspect of terrorism having realized that finances are at the core of every terror attack. Hence, without finances, terrorism will end. To solve terrorism financing, a state must have laws in place hence, this study sought to find out whether there exist laws and policies on terrorism financing in Kenya, whether they are adequate and finally, whether they have been implemented or not. With this feedback, this study was going to confirm or otherwise the

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<sup>442</sup> Draft guidelines by Law Society of Kenya on the Application of The Proceeds of Crime and Anti-Money Laundering Act, 2009, regulation 8.

hypothesis drawn that the current law on terrorism financing in Kenya, has been poorly implemented hence the rise in terrorism cases.

Chapter Two set out to discuss the available legislations and regulations on terrorism financing in Kenya. Through the analysis, it was realized that the laws are not adequate per se, however, for a country such as Kenya, they can be useful in initiation of the fight against terrorism financing. Adequate in the sense that they are not detailed and hence leave a lot of loopholes that could easily be taken advantage of by terrorists and their supporters.

In confirming the adequacy or otherwise of the laws, chapters Three and Four set to discuss the Al shabaab organization and its financial life, and an analysis based on the field study conducted on the financing of terrorism and its regulation in Kenya, respectively. Through the study of the terror organization, it was identified that this organization aims to work with the changing times in the governments' legal frameworks hence they come up with new ways of financing themselves once the governments closes down their sources of revenue. Hence, a realization that in order to combat terrorism-financing, states have to up to task in revising their laws to accommodate the changing circumstances of terrorism financing.

Chapter Four analyzed the statistics drawn from the field study conducted and confirmed the hypothesis that indeed there exist laws on terrorism financing. However, the said laws, firstly, are not adequate and secondly, the existing laws have not been fully implemented hence a reason for the rise in terror attacks in Kenya. Through the field research and desktop study conducted, this study came up with various challenges that may be affecting the state in its quest to control terrorism financing in Kenya.

Further, it has provided various recommendations that may be useful to the government in implementing a way forward on reducing cases on terrorism financing hence controlling terrorism. The implication of this study is that the government may be persuaded to rework on its legislations on terrorism financing, revise the funds that are directed to counter

terrorism and revamp its structures and personnel dealing with terrorism. With the changing nature of terrorism financing, there is a need for a continuous study on the same including more research on how best to curb terrorism financing not just in Kenya but globally since terrorism is a worldwide threat.

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## APPENDIX I: QUESTIONNAIRE

### QUESTIONNAIRE

**Study Title:** Impact of legislation on financing terrorism in Kenya

**Researcher:** Irish Scheel Honga

**Cell Phone No.:** 0729229251

**Email Address:** [scheelirish@yahoo.com](mailto:scheelirish@yahoo.com)

**Supervisor:** Dr. Constance Gikonyo

### INTRODUCTION

Dear Sir/Madam,

Thank you for accepting to participate in this interview. I am a postgraduate student at the University of Nairobi pursuing a Master degree in Law. In partial fulfillment of my Master degree, I am conducting a study on the impact of legislation on terrorism financing in Kenya.

This study aims at collecting data on financing of terror organizations in Kenya. Specific focus is on the issues on how terrorism is financed, who finances it and how the various respondents or organizations have been able to curb or reduce it.

I wish to assure you that your identity will not be revealed and the information given shall be used specifically for this research project. The interview will take approximately 30 minutes and the questionnaire will have both open ended and closed questions.

Your time, sacrifice and acceptance to be interviewed is well appreciated.

Do you agree to participate in this study? Yes ..... No .....

Kindly sign below:

(Accept/Decline)

## **SECTION A: BIO DATA**

Name \_\_\_\_\_

(Name to remain confidential if provided)

Age: \_\_\_\_\_ Sex: (Male/Female)

Occupation \_\_\_\_\_

Date of employment/engagement \_\_\_\_\_

Date of interview: \_\_\_\_\_

Time of interview: Start \_\_\_\_\_ End \_\_\_\_\_

Language of interview, if not English \_\_\_\_\_

## **SECTION B: FINANCING OF TERRORISM**

1. What do you understand by terrorism financing?
2. In what ways do people finance terrorism?
3. Do you think there is need to create awareness on the punishment in place for terrorism?

## **SECTION C: FINANCING OF AL-SHABAAB ORGANIZATION**

1. Have you identified the sources of finances for this organization? If so, kindly list them.
2. In your opinion, do you think the available laws on terrorism financing have been effective in curbing financing of this terror organization?
3. What are the challenges that have been faced in an attempt to control or close the sources of this organization's finances?

## **SECTION D: REGULATORY LAWS ON TERRORISM FINANCING**

1. Are you aware of any laws governing financing of terrorism?
2. Do you think the laws regulating terrorism financing are adequate? If yes, kindly explain?

3. Do you think the laws regulating terrorism financing have been effective in curbing terrorism financing?
4. Is the law in place sufficient in dealing with terrorism financing?
5. Who should be involved in the enforcement of this law?
6. Have you ever handled a case on terrorism financing?  
If yes, how did it go?  
If no, why?
7. What challenges do you encounter in the implementation of terrorism financing laws?
8. What would you recommend on implementation of the laws on terrorism financing?

#### **SECTION E: ENFORCEMENT STATISTICS**

9. How many people have been arrested in relation to terrorism financing?
10. How many companies' accounts have been frozen in line with terrorism financing?  
The specific offences?
11. How many have been convicted since 2012?
12. Has the money in the frozen accounts been returned back to the government?
13. Describe the freezing process and how suspicious accounts are identified?
14. Is there anything else you wish to add in relation to what we have been discussing in this interview?

Thank you.



## APPENDIX II: SCHEDULE OF INTERVIEWS

### UNIVERSITY OF NAIROBI

#### MASTER OF LAWS PROGRAMME 2017/2018

RESEARCH PROJECT: IMPACT OF LEGISLATION ON FINANCING TERRORISM IN  
KENYA

G62/7344/2017

#### SCHEDULE OF INTERVIEWS

Participants Number	Pseudonyms	Sex	Place of Interview	Occupation of the participant	Date of the interview
1.	Tim	Male	Nairobi	Senior Legal Researcher, NGO	29.05.2019
2.	Jeremy	Male	Nairobi	Legal Officer	29.05.2019
3.	Henry	Male	Nairobi	Legal Officer	29.05.2019
4.	Ibrahim	Male	Nairobi	Advocate	29.05.2019
5.	Nelion	Male	Nairobi	Actuarial Scientist working in an Insurance Company	29.05.2019
6.	Mary	Female	Nairobi	Development Practitioner , NGO	31.05.2019
7.	Miriam	Female	Nairobi	Head of operations in a banking	31.05.2019

				facility	
8.	Nelly	Female	Nairobi	Researcher	31.05.2019
9.	Kennedy	Male	Nairobi	Advocate	31.05.2019
10.	Molline	Female	Nairobi	Advocate	31.05.2019
11.	Mercy	Female	Nairobi	Legal Officer	31.05.2019
12.	Fred	Male	Nairobi	Advocate	05.06.2019
13.	Damian	Male	Nairobi	Advocate	05.06.2019
14.	Carol	Female	Nairobi	Legal Assistant (Lawyer)	05.06.2019
15.	Borine	Male	Nairobi	Law Student	05.06.2019
16.	Clendina	Female	Nairobi	Accountant- Finance Officer in a financial institution	05.06.2019
17.	Mike	Male	Nairobi	Law Lecturer	06.06.2019
18.	Monica	Female	Nairobi	Planning and Administration Assistant	11.06.2019
19.	Mercy	Female	Nairobi	Prosecution Counsel	11.06.2019
20.	Lucy	Female	Nairobi	Accountant	11.06.2019

21.	Ann	Female	Nairobi	Advocate	12.06.2019
22.	Sella	Female	Nairobi	Revenue Officer	12.06.2019
23.	Minny	Female	Nairobi	Mechanical Engineer, KEBS	12.06.2019
24.	Mel	Female	Nairobi	Tax Enforcement Officer	19.06.2019
25.	Vaida	Female	Nairobi	Lawyer	19.06.2019
26.	Kellim	Female	Nairobi	Legal Officer	19.06.2019
27.	Samima	Female	Nairobi	Insurance Underwriter	22.07.2019
28.	Wendine	Female	Nairobi	Advocate	22.07.2019
29.	Linsey	Female	Nairobi	Lawyer, NGO	23.07.2019
30.	Andrew	Male	Nairobi	Pension Administrator	24.07.2019
31.	Mony	Female	Nairobi	Digital Banking Consultant	27.07.2019
32.	Nancy	Female	Nairobi	Legal Consultant (AML/CFT)	27.07.2019

### APPENDIX III

#### a. Reported Kidnapping Cases by Al shabaab terrorists

Date	Reported victims/Place of Kidnapping	Ransom paid or not?
November 2008	Maria Terea Olivero & Caterina Giraudo (abducted in Mandera)	151.5 Million shillings paid as ransom <sup>443</sup>
16 May 2019	Cuban doctors kidnapped by Al shabaab in Northern part of Kenya	Terrorists demanded 1.5 Million dollars, however, the Kenyan Government refused to pay. There is no news about their rescue yet. <sup>444</sup>

#### Statistics of Terrorism Attacks organized by Al shabaab in Kenya since 2012

Date	Area of attack	Number of Deaths/Casualties	Analysis-Increase or decrease	Conviction or Acquittal for suspects?
21.10.2010	Kenya-Somali Border	30 Persons killed <sup>445</sup>		Not known
28.10.2011	Kenyan Bar	1 person killed, 20 People injured-Grenade attack <sup>446</sup>	Decrease	Not known
10.03.2012	Machakos Bus Station, Nairobi	6 people killed, 60 persons injured	Increase	Not known
18.11.2012	City Matatu	7 passengers killed, 33 persons injured	Increase	Not known
21.09.2013	Westgate Mall, Nairobi	68 killed, 175 persons wounded <sup>447</sup>	Increase	Not known
23.11.2013	Arabiya area, Mandera County	28 persons killed	Decrease	Not known

<sup>443</sup> Nymabega Gisasa, 'Belly of the beast: Inside Al shabaab's gruesome abduction syndicate' (14 April 2019 Daily Nation).

<sup>444</sup> 'Al-Shabaab demand 1.5 Million dollars ransom for kidnapped Cuban doctors' (16 May, 2019 The East African).

<sup>445</sup> Juliet Atellah, 'The Aftermath of terror attacks in Kenya since 1975' (4 March 2019, The Elephant).

<sup>446</sup> Ibid.

<sup>447</sup> <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/61> accessed 14 June 2019

15.06.2014-17.06.2014	Mpeketoni area	49 persons killed, Unknown number wounded	Decrease	Not known
05.07.2014	Gamba police station	29 people killed <sup>448</sup>	Decrease	Not known
July, 2014	Hindi village, Lamu	21 people killed	Decrease	Not known
22.11.2014	Omar Jilo, Mandera	28 killed, unknown number of persons wounded	Increase	Not known
02.12.2014	Koromei, Northern Part of Kenya	36 Christian quarry workers killed	Increase	Not known
02.04.2015	Garissa University College	151 persons killed, unknown number wounded	Increase	Not known
07.07.2015	Mandera town	14 people dead		Not known
22.01.2016	Attack on a Kenyan Military base in Somalia	About 100 persons alleged to have been killed as per Al shabaab report. <sup>449</sup>	Decrease	Not known
25.10.2016	Boshari Guest home	12 people killed <sup>450</sup>	Decrease	Not known
13.07.2017	South eastern Kenya	(a) 2 Police officers and a civilian killed (b) A public works official kidnapped by Al Shabaab (However, he was rescued by the Kenyan Authorities) <sup>451</sup>	Decrease	Not known
06.11.2017	Daba City, Mandera County	12 Persons Killed, unknown number wounded	Increase	Not known
13.08.2017	Yadi, Damase and El Wak towns in Mandera County	Kenyan police vehicles destroyed through improvised explosives	Increase	Not known
25.09.2018	Pandagu, Lamu County	10 Kenyan soldiers killed	Decrease	Not known

<sup>448</sup> IGAD, 'Al shabaab as a transnational security threat' (March 2016).

<sup>449</sup> Tomi Oladipo, 'What happened when Al shabaab attacked a Kenyan base in Somalia?' *BBC News* (2016).

<sup>450</sup> Juliet Atellah, 'The Aftermath of terror attacks in Kenya since 1975' *The Elephant* (4 March 2019).

<sup>451</sup> Tom Odula, 'Kenya: 3 dead as extremists kidnap top government official' *Associated press* (31 July 2017).

15.01.2019	Dusit 2 Hotel Attack	21 people killed, 700 persons rescued	Increase	Not known
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**b. Statistics of actions taken by Kenyan Authorities on Al shabaab group since 2012**

Date	Action taken	Charged/Convicted/Freed/Murdered?
25.10.2016	Two women convicted in United States for financing Al shabaab in relation to Westgate terror attack <sup>452</sup>	Convicted (but not in Kenya)
August 2017	Hussein Said Omar alias Babley and Ahmed Said Omar alias Dogo were gunned down by Anti-terrorism detectives-Mepeketoni attack suspects	Murdered
20.03.2018	Kenyan Authorities arrest 2 Al shabaab recruiters in Kenya <sup>453</sup>	Not known
22.03.2018	(a) A Kenyan Al shabaab commander is arrested along Gedo area by Somali National Army  (b) 14 AK47 Rifles recovered together with ammunition  (c) Al shabaab flags together with military uniforms were also recovered <sup>454</sup>	Not known
25.09.2018	According to Kenyan Military Force, 10 Al shabaab soldiers were killed during the attack <sup>455</sup>	Murdered
03.07.2019	3 Garrisa terror suspects charged and tried were convicted by the Kenyan courts. Rashid Charles Mberesero was handed life sentence, Mohammed Abikar	Convicted

<sup>452</sup> < <https://www.voanews.com/africa/two-women-convicted-us-financing-somali-group-al-shabab>> accessed 19 June 2019.

<sup>453</sup> 'Two Al shabaab recruiters arrested on way to Somalia' *Star newspaper* (20 March 2018).

<sup>454</sup> Goldberg, 'Kenyan Al shabaab Commander arrested by SNA Troops' *Strategic Intelligence* (22 March 2018).

<sup>455</sup> Ibid.

	and Hassan Edin Hassan were given 41 year jail term <sup>456</sup> .	
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**c. Some of the reported conviction cases of arrested Al shabaab terror suspects**

<b>Date</b>	<b>Terror attack and date of its occurrence/ Illegal relations with Al shabaab</b>	<b>Result</b>	<b>Observation</b>
March 2015	Ummulkheir Sadri, Khadija Abubakar and Halima Adan arrested in Elwak, Mandera County on suspicion of being members of Al shabaab	Arraigned in Mombasa Court before Hon. Evans Makori, detainee, released on bail and finally, acquitted on ground of lack of enough evidence on 10 <sup>th</sup> October	Lack of proper collection of evidence <sup>457</sup>
19.05.2015	Appellant appealed for being convicted for being a member of Al shabaab terror organization and engaging in an organized crime <sup>458</sup>	Appeal dismissed. Conviction upheld.	
29.11.2016	Appellant had been convicted of being a member of Al shabaab terror organization <sup>459</sup>	Appeal allowed and appellant acquitted-Prosecution failed to prove his case	
19.06.2019	Garissa University Attack-2015	3 convicted <sup>460</sup>	Conviction 4 years later
10.07.2018	Francis Macharia Karichu <sup>461</sup> accused of Supporting Al shabaab group through	Released on bail pending trial	To be determined

<sup>456</sup> Japheth Ogila, 'Garissa terror suspects convicted, jailed' *Standard Newspaper* (Nairobi, 3 July 2019).

<sup>457</sup> Ibid.

<sup>458</sup> Criminal Appeal No. 98 of 2014 Thomas Mwanzia Komo v Republic (2015) e-KLR.

<sup>459</sup> Criminal Appeal No. 49 of 2016 Mohammed Haro Kare v Republic (2016) e-KLR.

<sup>460</sup> Emmanuel Ingoza, 'Garissa University attack: Three convicted over Kenya Massacre' *BBC Africa* (Nairobi 19 June 2019).

<sup>461</sup> Criminal Revision 698 of 2018 Francis Macharia Karichu v Republic (2018) e-KLR.

	preparation of a forged Kenyan Identity Card belonging to Jirma Huka Galgalo (deceased member of Al shabaab)		
13.03.2019	Appeal by Abdirizak Muktar Edow against conviction. He was charged with providing material support for the commissioning of acts of terrorism contrary to section 9 of the Prevention of Terrorism Act, being a member of Al shabaab terror group and possessing electronics with information on plans of instigating a terror attack <sup>462</sup>	Appeal allowed on one count of providing his vehicle to be used for terrorism. Conviction on other counts upheld.	
04.05.2018	Appeal over conviction <sup>463</sup> for the offence of possessing a Samsung tablet with videos meant to instigate a terrorist act by Al shabaab group. 1 <sup>st</sup> video meant to encourage people to join Al shabaab whereas 2 <sup>nd</sup> video explained how to execute a terrorist attack.	Appeal dismissed. Conviction upheld.	

<sup>462</sup> Criminal Appeal No. 149 of 2016 Abdirizak Muktar Edow v Republic (2019) e-KLR.

<sup>463</sup> Criminal Appeal No. 30 of 2017 Osman Mohamed Balagha v Republic [2018] e-KLR.



## APPENDIX IV

**Table on Kenya's Financial Budget on National Security**

Year	Department	Budget Allocation
2011/2012	National Security	125.8 Billion
2012/2013	National Security a. Internal Security (Purchasing motor vehicles, recruiting 3,500 more police officers, establishment fund for Police Service Commission and IPOA) <sup>464</sup>	83.5 Billion
2013/14	National Security a. 4.5 Billion-To enhance security operations b. 1.5 Billion-To enhance investigation of crime and research c. 3 Billion-To lease 1,200 vehicles for police officers <sup>465</sup>	74.4 Billion <sup>466</sup>
2014/15	National Security a. 3.3 Billion-Enhance security operations-reduced b. 3.5 Billion-Purchase of modern security equipment-reduced from 4 Billion the previous year c. 2.9 Billion-For recruiting more police officers (10,000) d. 6.7 Billion-Purchase of new vehicles for police officers e. "Nyumba kumi" initiative launched f. <b>6.1 Billion-Allocated to African Mission in Somalia (AMISON)</b> <sup>467</sup>	
2015/16	National Security Ministry of defence	78.8 Billion <sup>468</sup>

<sup>464</sup> Institute of Economic Affairs, 'Budget 2012/13, Laying the foundation for devolved system of Government: Marathon or a sprint?'.  
<sup>465</sup> Institute of Economic Affairs, 'Budget 2013/2014: The onset of the devolved Government and the hurdles ahead'.

<sup>466</sup> Dorah Nesoba, 'The National Budget in 2013/2014 at a glance' (2013) ADILI 142.

<sup>467</sup> Institute of Economic Affairs, 'Budget 2014/15: Balancing financing concerns, while responding to spending inefficiencies'.

	National Intelligence Service	19.2 Billion <sup>469</sup>
2016/17	National Security a. Enhanced security operations-9 Billion b. Leasing of police vehicles-9.2 Billion c. 29.8 Billion-Police and military modernization d. Border security-3 Billion	142 Billion <sup>470</sup>
2017/18	a. Enhanced security operations-12 Billion <sup>471</sup> b. Police modernization-24.8 Billion c. Lease of police vehicles-8.1 Billion d. Equipping of national forensic laboratory-0.9 Billion e. Border security-2 Billion f. Police and prison officers-6.8 Billion	54.6 Billion
2018/19	a. Leasing of police vehicles-9.2 Billion <sup>472</sup> b. Enhanced security operations-9 Billion c. Police and military modernization-29.8 Billion d. Securitization of borders-3 Billion e. Police and prison Officers' medical insurance scheme-4.8 Billion f. Group life insurance for Police-1.7 Billion	142.3 Billion
2019/20	Defence <sup>473</sup> National intelligence service	121.6 Billion  37.7 Billion

<sup>468</sup> National Gender and Equality Commission, 'Financial Year 2015/16 Budget Analysis on Gender and inclusion: A special focus on trade and Agriculture' (2015).

<sup>469</sup> Ibid.

<sup>470</sup> Timothy Makhoka, 'Kenya to spend sh 142 Billion on national security' *Standard Newspaper* (Nairobi 15 June 2018).

<sup>471</sup> Joseph Muraya, 'Government allocates sh 54.6 Billion to security sector' *Capital News* (Nairobi 30 March 2017).

<sup>472</sup> The treasury, Government of Kenya, 'Budget-The "mwananchi" Guide' (2018).

<sup>473</sup> Joseph Muraya, 'Security agencies allocated sh326bn in new budget' *Standard Newspaper* (Nairobi 14 June 2019).



## **Appendix V**

### **Summary of representation of Institutions and persons interviewed**

1. Capital Markets Authority
2. Advocates both in private practice, Corporate world and Government
3. Communications Authority of Kenya
4. Banking facilities
5. Non Governmental Organizations
6. Insurance Companies
7. Law Students
8. Ethics and Anti-Corruption Commission
9. Accountants and Finance Officers
10. Law lecturers
11. Office of the Director of Public Prosecutions (ODPP-Kenya)
12. Kenya Bureau of Standards
13. Kenya Revenue Authority

## APPENDIX VI

### Letter of Authorization-NACOSTI



#### NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

Telephone:+254-20-2213471,  
2241349,3310571,2219420  
Fax:+254-20-318245,318249  
Email: dg@nacosti.go.ke  
Website : www.nacosti.go.ke  
When replying please quote

NACOSTI, Upper Kabete  
Off Waiyaki Way  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No. **NACOSTI/P/19/43244/29502**

Date: **12<sup>th</sup> April, 2019**

Irish Scheel Honga  
University of Nairobi  
P.O. Box 30197-00100  
**NAIROBI.**

#### **RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on ***“Impact of legislation on terrorism financing”*** I am pleased to inform you that you have been authorized to undertake research in **Nairobi County** for the period ending **12<sup>th</sup> April, 2020**.

You are advised to report to **the County Commissioner and the County Director of Education, Nairobi County** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit **a copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.

  
**GODFREY P. KALERWA MSc., MBA, MKIM**  
**FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The County Commissioner  
Nairobi County.

The County Director of Education  
Nairobi County.

*National Commission for Science, Technology and Innovation is ISO9001:2008 Certified*

# APPENDIX VII

## RESEARCH PERMIT



**THIS IS TO CERTIFY THAT:**  
**MS. IRISH SCHEEL HONGA**  
**of UNIVERSITY OF NAIROBI, 0-100**  
**NAIROBI, has been permitted to conduct**  
**research in Nairobi County**

**on the topic: IMPACT OF LEGISLATION**  
**ON TERRORISM FINANCING**

**for the period ending:**  
**12th April, 2020**



**Applicant's Signature**  
**Director General**  
**National Commission for Science, Technology & Innovation**

**THE SCIENCE, TECHNOLOGY AND INNOVATION ACT, 2013**

The Grant of Research License is guided by the Science, Technology and Innovation Research Licensing Regulations, 2014.

**CONDITIONS**

1. The License is valid for the proposed research, invention and specified period.
2. The License and any rights thereunder are non-transferable.
3. The Licensee shall inform the County Governor before commencement of the research.
4. Excavation, filming and collection of specimens are subject to further necessary clearance from relevant government agencies.
5. The Licensee does not give authority to transfer research materials.
6. MCGST may monitor and evaluate the licensed research project.
7. The Licensee shall submit one hard copy and upload a soft copy of their final report within one year of completion of the research.
8. MCGST reserves the right to modify the conditions of the License including cancellation without prior notice.

**National Commission for Science, Technology and Innovation**

**RESEARCH LICENSE**

**National Commission for Science, Technology and Innovation**  
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Website: [www.nact.ac.ke](http://www.nact.ac.ke)

**CONDITIONS: see back page**



